

United States

Circuit Court of Appeals

For the Ninth Circuit.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Appellant,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C. L.
PARMALEE, GEORGE H. HULL, Jr., ROY
M. PIKE, OAKLAND BANK OF SAVINGS,
a Corporation, YOLO COUNTY CONSOLI-
DATED WATER COMPANY, a Corpora-
tion, CAPAY DITCH COMPANY, a Corpo-
ration, YOLO WATER AND POWER COM-
PANY, a Corporation, and WHITE &
COMPANY, a Common Name Under Which
More Than Two Persons are Associated in
Business and Transact Such Business,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

Filed

DEC 14 1914

United States

Circuit Court of Appeals

For the Ninth Circuit.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Appellant,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C. L.
PARMALEE, GEORGE H. HULL, Jr., ROY
M. PIKE, OAKLAND BANK OF SAVINGS,
a Corporation, YOLO COUNTY CONSOLI-
DATED WATER COMPANY, a Corpora-
tion, CAPAY DITCH COMPANY, a Corpo-
ration, YOLO WATER AND POWER COM-
PANY, a Corporation, and WHITE &
COMPANY, a Common Name Under Which
More Than Two Persons are Associated in
Business and Transact Such Business,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Agreement, January 19, 1907, Between E. P. Vandercook and Capay Ditch Co. et al.	9
Agreement, March 3, 1908, Between Shareholders of Central Counties Land Co. et al. and E. P. Vandercook	25
Answer to Bill in Equity	115
Assignment of Errors on Appeal	99
Bill in Equity	1
Bond on Appeal	102
Certificate of Clerk U. S. District Court to Additional Portions of Record on Appeal. .	118
Certificate of Clerk U. S. District Court to Transcript of Record	106
Citation on Appeal	107
Decree	95
Description of Certain Property Owned by Yolo County Consolidated Water Company.	80
Letter of E. L. Phillips to Rudolph W. Van Norden	36
Notice and Demand	48
Notice of Appropriation of Water, Lake County, California	65

ii *Power and Irrigation Company of Clear Lake*

Index.	Page
Order Allowing Appeal	97
Order Dismissing the Above-entitled Action...	94
Order of Submission of Jurisdictional Question, etc.....	116
Petition for Order Allowing Appeal and Order Allowing Appeal	97
Praecipe for Further Transcript on Appeal....	117
Praecipe for Transcript on Appeal	104
Resolution of Board of Directors of Central Counties Land Co.....	43
Resolution of Board of Directors of Clear Lake Power and Irrigation Company	29
Stipulation for Further Transcript of Record on Appeal	113
Supplemental Transcript of Record	111

*In the United States District Court for the Northern
District of California.*

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C.
L. PARMALEE, GEORGE H. HULL, Jr.,
ROY M. PIKE, OAKLAND BANK OF
SAVINGS, a Corporation, YOLO COUNTY
CONSOLIDATED WATER COMPANY, a
Corporation, CAPAY DITCH COMPANY,
a Corporation, YOLO WATER AND
POWER COMPANY, a Corporation, and
WHITE AND COMPANY, a Common Name
Under Which More Than Two Persons are
Associated in Business and Transact Such
Business,

Defendants.

Bill in Equity.

Now comes the above-named plaintiff and complains of the defendants above named, and for cause of action alleges:

I.

That plaintiff now is, and ever since the 9th day of April, 1913, has been, a corporation duly organized and existing under and by virtue of the laws of the State of Arizona.

II.

That the defendants Joseph Craig and Roy M.

2 *Power and Irrigation Company of Clear Lake*

Pike are each of them residents and citizens of the State of California.

III.

That the defendants William A. Brady, E. I. Phillips, Archibald S. White, C. L. Parmalee, and George H. Hull, Jr., are each and all residents and citizens of the State of New York.

IV.

That White and Company is a common name under which the [1*] defendants Archibald S. White, C. L. Parmalee, George H. Hull, Jr. and Roy M. Pike, and other persons whose names are unknown to plaintiff, were on the first day of June, 1911, ever since have continued to be, and still are, associated in business, and that the said defendants Archibald S. White, C. L. Parmalee, George H. Hull, Jr., and Roy M. Pike, together with said other persons, on the said 1st day of June, 1911, were, and ever since have continued to be, and still are, transacting such business under said common name in the State of New York and in the State of California, and elsewhere. That all of the persons so associated in business are citizens and residents of States of the United States of America other than the State of Arizona. That the business in which the said White and Company has, during all of said time, and still is so engaged as aforesaid, is, among other things, the business of buying, selling, and dealing in stocks and bonds, and in underwriting bonds, and selling and disposing of the same, examining into business propositions, involving water, power and irrigation,

*Page-number appearing at foot of page of original certified Record.

dams, reservoirs, poundings, ditches, flumes, watersheds, water supplies, and possibilities for the storage, sale and distribution of waters for irrigation, domestic, electrical generation and power purposes, and, if found promising, to advance the necessary money to finance the securing and organization thereof into a shape and condition to invite capital, and, to that end, to cause corporations to be organized, properties, real, personal and mixed, to be conveyed to such corporations, and to cause such corporations to create bonded indebtednesses, and to purchase, underwrite and place the said bonds, and to receive as a bonus or commission therefor a discount upon such bonds, either in the form of money or of additional bonds, and to receive preferred and common stocks as a bonus or commission for their services in effecting the organization and the [2] financing of such projects or enterprises and for their participation and services in and about the transaction in which they so engage.

V.

That the defendant Oakland Bank of Savings now is, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California.

VI.

That the defendant Capay Ditch Company now is, and at all the times hereinafter mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of California, and that said corporation, at all the times herein-

4 *Power and Irrigation Company of Clear Lake*

after mentioned, has owned, controlled, operated and managed, for compensation, a water system within the State of California, and has owned, controlled, operated, and managed, for compensation, canals, structures, appliances, and other real estate fixtures, and personal property, in connection with and to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, and carriage of water for irrigation.

VII.

That the defendant Yolo County Consolidated Water Company now is, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California, and that said corporation, at all the times hereinafter mentioned, has owned, controlled, operated, and managed, for compensation, a water system within the State of California, and has owned, controlled, operated, and managed, for compensation, canals, structures, appliances, and other real estate fixtures, and personal property, in connection with and to facilitate the diversion, development, [3] storage, supply, distribution, sale, furnishing and carriage of water for irrigation.

VIII.

That the defendant Yolo Water and Power Company now is, and at all times since December 11th, 1911, has been, a corporation duly organized and existing under and by virtue of the laws of the State of California, and that said corporation was organized for the purpose, among other things, of owning,

controlling, operating, and managing, for compensation, a water system within the State of California, and for the purpose of owning, controlling, operating, and managing, for compensation, canals, structures, appliances, and other real estate, fixtures, and personal property, in connection with and to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, and carriage of water for irrigation.

IX.

That in the County of Lake, State of California, there is situate a lake known as and called Clear Lake, which said lake is 22 miles long, or thereabouts, and 8 miles wide, or thereabouts; that the outlet of said Clear Lake is a stream known as and called Cache Creek, which said stream flows in a general southerly and easterly direction through the Counties of Lake, Colusa and Yolo in the State of California, finally discharging and emptying into the Sacramento River in the County of Yolo, State of California.

That in the winter season, and particularly in times of flood and seasonal rainfall, the said lake rises to a height of more than ten (10) feet above low-water mark, as said low-water mark is established by the Geological Survey of the United States Government. [4]

That the difference in the quantity of the water in the said Lake between said low-water mark and said high-water mark is 22,446,000,000 cubic feet of water.

That during the season of high water, storms, and seasonal rainfall, in the Autumn, Winter and Spring

6 *Power and Irrigation Company of Clear Lake*

of each year, vast quantities of water from the said lake are discharged through Cache Creek, the said outlet of the said Clear Lake, and into the said Sacramento River, where they are lost and wasted.

That lying within the Counties of Yolo, Colusa, and Solano in said State of California are two hundred thousand (200,000) acres of land, or thereabouts, which said lands are arid and in need of irrigation, and the value of which lands will be largely increased if water for irrigation purposes is supplied to them; that if the water thus discharged through the said Cache Creek can be stored and impounded in the said lake, by raising the said lake to a height of ten (10) feet above the said established low-water mark, all of the said area can be irrigated therewith by and through a system of canals leading from a proper and convenient point on said Cache Creek.

That the said Clear Lake is situate at a mean elevation of thirteen hundred twenty-five (1325) feet above the level of the sea. That the said water of the said lake, if so stored and conserved, will not only be available for irrigation as aforesaid, but will also be available for electrical power, without the use for the one purpose in any manner interfering or conflicting with the use for the other purpose and that between forty thousand (40,000) and forty-five (45,000) thousand electrical horse-power can be produced during the entire year by such use of said waters, and a much greater amount can be produced thereby during the period of seasonal rainfall. [5]

X.

That in the year 1906, three corporations were organized for the purpose of purchasing, acquiring, taking over, and utilizing the aforesaid lake, creek, and waters for the purposes aforesaid. That one of said corporations was designated and called Central Counties Land Company. That another of said corporations was designated and called California Industrial Company, and that the third of said corporations was designated and called Central California Power Company. That it was intended that the said corporations last named should work harmoniously the one with the other. That it was intended that the said Central Counties Land Company should acquire and own all of the land fronting upon the said lake, above the aforesaid ten (10) foot level of said lake, above the established low-water mark. That it was intended that the said California Industrial Company should own the riparian rights in said lake, and the fee simple or overflowage rights to all of the lands around the borders of the said lake below the aforesaid ten (10) foot level; that said California Industrial Company should erect a dam at or near the mouth or outlet of the said Clear Lake and that it should sell and dispose of the water to be conserved and impounded therein, for power, irrigation, domestic, and other public uses and purposes. That it was intended that the said Central California Power Company should acquire from the said California Industrial Company the right to use the said waters for the generation of electricity and electrical power, and, to that end, that it should

8 *Power and Irrigation Company of Clear Lake*

build all necessary ditches, flumes, tunnels, canals, and power-houses, and should install such hydro-electrical machinery and such transmission lines as would properly apply the electrical energy so to be produced, to public uses. [6]

XI.

That for a number of years prior to the organization of said three corporations last above named, the defendant Yolo County Consolidated Water Company had diverted the natural flow of said Cache Creek, during the summer, dry, or irrigating season, for the purpose of irrigating lands in Yolo County, State of California, and had irrigated therewith in an inefficient and unsatisfactory manner from five thousand to ten thousand acres of land, and had built fifty (50) miles, or thereabouts, of canals, and that divers farmers or farming neighborhoods had built laterals leading to said canals to the extent of about two hundred (200) miles in length. That the quantity of water supplied during the irrigating season, through said canals and laterals, varied greatly at different times in said season, but at no time exceeded or ever has exceeded one hundred (100) second feet, and frequently no water whatever reached said laterals.

XII.

That on the 19th day of January, 1907, the defendant Capay Ditch Company, a corporation, owned 8,789 shares of the capital stock of the defendant Yolo County Consolidated Water Company out of a total of 9,924 shares, or thereabouts, which had been issued by the said defendant Yolo County Consoli-

dated Water Company, and the balance of the said shares issued, save sixty (60) or thereabouts, were owned in divers proportions by the Bank of Woodland, a corporation, Stephens Agricultural and Live Stock Company, a corporation, Kate S. Craig, J. L. Stephens, L. D. Stephens, J. J. Stephens, P. N. Ashley, N. A. Hawkins, and the defendant Joseph Craig.

XIII.

That the said corporations Central Counties Land Company, California Industrial Company, and Central California Power [7] Company proceeded to carry out the plans herein aforesaid, and, to that end, between the fall of the year 1906 and the 1st day of June, 1911, purchased lands and overflowage rights in and about said Clear Lake, caused the water locations to be made, pipe, tunnel, ditch, canal, and conduit lines to be surveyed, and did and performed other acts and things in and about the said enterprise, at a total cost of one million (\$1,000,000.00) dollars, or thereabouts.

XIV.

That on said 19th day of January, 1907, one E. P. Vandercook made and entered into an agreement in writing with the said defendants Capay Ditch Company and Joseph Craig, and with the other owners of the said capital stock of said defendant Yolo County Consolidated Water Company, hereinabove named, which said agreement was and is in the words and figures following, to wit: [8]

[Agreement, January 19, 1907, Between E. P. Vandercook and Capay Ditch Co. et al.]

THIS AGREEMENT made and entered into this

10 *Power and Irrigation Company of Clear Lake*

19th day of January, 1907, by and between E. P. VANDERCOOK, the party of the First Part, and the CAPAY DITCH COMPANY, a Corporation, the STEPHENS AGRICULTURAL AND LIVE STOCK COMPANY, a corporation, the BANK OF WOODLAND, a Corporation, J. CRAIG, KATE S. CRAIG, J. L. STEPHENS, L. D. STEPHENS, J. J. STEPHENS, P. N. ASHLEY and N. A. HAWKINS, the parties of the second part,

WITNESSETH:

That the party of the first part agrees to buy, and the parties of the second part agree to sell all of the Capital Stock of the Yolo County Consolidated Water Company owned by the parties of the second part and being in the aggregate more than seventy-five per cent of the whole of said capital stock; the number of shares owned by each of the parties of the second part being set down opposite the signatures of the parties hereto.

And the price therefor shall be the sum of Forty-five dollars per share, payable as follows, to wit: the sum of fifty-one thousand, two hundred and fifty dollars already paid thereon, receipt of which is hereby acknowledged and the balance in the manner and time as follows, to wit: The sum of Forty Thousand Dollars to be paid in the stock of the Central Counties Land Company, a corporation, taken at seventy-five per cent of its face or par value, to be issued and delivered upon the signing of this agreement and with the guarantees accompanying said stock; and the balance in cash and bonds as follows, to wit: the sum of three dollars and thirty-three cents

per share in gold coin on the 15th day of January, 1908, and the sum of three dollars and thirty-three cents per share in gold coin on the 15th day of July, 1908, and the sum of three dollars and thirty-four cents per share in gold coin on the 15th day of January, 1909, and the balance in the bonds of Central California Power Company, a California corporation, taken at ninety per cent of their par value, said bonds to [9]. be issued, deposited and delivered as hereinafter stated. The amount of said bonds will be two hundred fifty-eight thousand seven hundred and fifty (\$258,750) Dollars, provided the whole amount of the capital stock of the Yolo County Consolidated Water Company is sold and delivered under the terms of this agreement and proportionately less if less than the whole of said capital stock be so sold and delivered.

It is agreed and understood that any of said stock not in escrow with California Safe Deposit and Trust Company, a California corporation, and held by the parties of the second part shall be properly endorsed and placed with the said California Safe Deposit and Trust Company, and all the stock of the Yolo County Consolidated Water Company hereby, sold and so placed in escrow shall remain in escrow with the banking department of said California Safe Deposit and Trust Company, and be delivered according to the terms of this agreement.

It is further agreed and understood that the bonds of said Central California Power Company herein described as a part of the consideration of said sale, shall also be placed in escrow with said California

12 *Power and Irrigation Company of Clear Lake*

Safe Deposit and Trust Company, as soon as the same shall be issued, to be held and delivered according to the terms of this agreement.

It is understood that the party of the first part will purchase and pay for all other capital stock of the Yolo County Consolidated Water Company which may be offered to him by the other stockholders thereof upon the same terms and at the same price at which the stock of the parties of the second part is by this agreement sold to the party of the first part.

It is further understood and agreed that all the lands and property purchased from the Spring Valley Water Works and its associate companies and other lands owned by the Yolo County Consolidated Water Company bordering on Clear Lake [10] and Cache Creek in Lake County shall be transferred to the Central Counties Land Company, reserving to the Yolo County Consolidated Water Company the right to overflow all that portion of said lands lying below a lake level of seven feet and four inches above the Government low-water mark of said lake, such conveyance to be delivered at the time the stock of said Central Counties Land Company is issued and delivered under the terms hereof.

The stock of the Yolo County Consolidated Water Company and the bonds of the Central California Power Company to be issued and placed in escrow under the terms of this agreement shall remain with California Safe Deposit and Trust Company until all cash payments herein provided to be paid are fully made and until the parties of the second part

have been furnished with a copy of the proceedings of Central California Power Company, certified by its Secretary to be correct, showing that the bonds of said company, and until said bonds shall have a market value of ninety per cent of their par value; whereupon the said California Safe Deposit & Trust Company shall deliver the stock of the Yolo County Consolidated Water Company to the party of the first part and the said bonds to the parties of the second part; provided, however, that at any time after said bonds have been issued and placed in escrow any one or number or all of the parties of the second part at his or their option shall be entitled to receive his or their proportion of said bonds, together with the additional bonds at the price herein named for his part of any cash payments remaining unpaid, upon his delivering, or causing to be delivered, his or their said stock to the party of the first part.

It is further understood and agreed that any and all [11] moneys which may be expended by Yolo County Consolidated Water Company, with the consent of the party of the first part, for permanent betterments or improvements or for the acquisition of any additional property required for the water system and storage of water, pending this agreement, shall be repaid to said Company by the party of the first part with interest thereon at the rate of five per cent per annum. The party of the first part may pay all persons from whom contracts or options are held by the corporation, or may procure extensions of the options to such time as will protect the

14 *Power and Irrigation Company of Clear Lake*

rights of said corporation to the same extent that they are now protected and with the same latitude of time now held by said corporation; all such payments and extensions shall be made in the name of and for the use of the Yolo County Consolidated Water Company, excepting as hereinafter provided.

The party of the first part further agrees and covenants that he will procure at his own expense from the Yolo County Consolidated Water Company a grant of permanent water rights upon and for seven thousand acres of land belonging to the parties of the second part, it being expressly provided that the water to be used under said water rights is to be supplied and paid for on the same terms and conditions that water is sold to other persons from the ditches of said corporation.

The parties of the second part hereby undertake and agree that the shares of the capital stock so placed in escrow and sold to the party of the first part shall not be subject to any indebtedness of the said Yolo County Consolidated Water Company, or to any lien or liability and that the said Yolo County Consolidated Water Company shall not be indebted in any sum whatever when said stock shall be finally delivered as herein provided for, excepting only the bonded debt of \$225,000, of said corporation now outstanding which together with the interest hereafter to become due thereon shall [12] remain a liability of said Yolo County Consolidated Water Company.

It is further understood and agreed that the Yolo County Consolidated Water Company is entitled to

receive rights of way across all property now owned by the stockholders of said corporation, who are parties to this agreement, or by the Bank of Woodland or any other corporation or company controlled by the stockholders of said Yolo County Consolidated Water Company; said rights of way to cover rights for ditches, flumes, dams, power lines, pole lines and rights to flood land bordering on the shores of Clear Lake and any other purpose which the party of the first part and his associates may require to use in connection with the business of supplying water for irrigation and domestic purposes and the development and transmission of power.

Said parties of the second part, in consideration of the execution of this agreement by the party of the first part, hereby grant unto said YOLO COUNTY CONSOLIDATED WATER COMPANY, and to its successors or assigns, forever, rights of way over all of their, or any of their lands for such ditches, flumes, dams, power lines, pole lines, and for such other purposes and uses as may be necessary or useful to said Yolo County Consolidated Water Company in the discharge of its corporate functions and the development of its business of supplying water for irrigating and domestic purposes and the development and transmission of power; and said parties of the second part also grant unto Yolo County Consolidated Water Company, and to its successors and assigns forever, the right to overflow all of their or any of their lands bordering on Clear Lake to the extent caused by raising the level of Clear Lake a perpendicular distance of seven (7) feet four (4)

inches above the low water mark established by the United States Government; and said parties of the second part covenant and agree that they and each of them will, for the [13] purpose of fully carrying into effect the grants made by the terms of this agreement, make, execute and deliver to said Yolo County Consolidated Water Company, such other or further assurances as the said party of the first part may be advised by persons learned in the law are necessary to fully vest in said Yolo County Consolidated Water Company the rights herein granted.

It is further understood and agreed that should the party of the first part fail to make any of the additional payments of principal or interest herein provided, at the time the same becomes due, or fail to perform his part of this agreement, then in that event the undersigned party of the first part shall lose all rights to purchase said property and all moneys paid thereon shall be retained as a consideration for the execution of this agreement and the party of the first part shall have no right to recover any portion of said payments; and said parties of the second part in that event shall have, and are hereby granted the right to purchase for the sum of three hundred and fifty thousand dollars the right to overflow all the lands bordering on Clear Lake to the extent caused by the raising of the level of Clear Lake a perpendicular distance of seven (7) feet four (4) inches above the low-water mark established by the United States, whether said right shall be in the name of the party of the first part, or any other associated persons, corporation or company; and, in

said event of such failure, said parties of the second part shall have and are hereby granted the right to purchase at their reasonable market value any land needed for the purpose of erecting dams or other works necessary to raise the level of Clear Lake a perpendicular distance of seven (7) feet four (4) inches above the low-water mark established by the United States.

It is understood and *agree* that the said Yolo County Consolidated Water Company owns the ditches, dams, flumes, rights [14] of way and the property now being used by it and in the event that legal title to any of said property is not vested in said corporation that the same shall be transferred to said corporation within one year from the date hereof.

It is further understood and *agree* that the Yolo County Consolidated Water Company shall be entitled to receive and shall receive from the stockholders of said corporation and from any corporation controlled by said stockholders all riparian rights for lands bordering on Cache Creek except the right to take water from said Cache Creek for livestock and domestic purposes.

It is further understood and agreed that the party of the first part will pay interest on all the outstanding bonds of the Yolo County Consolidated Water Company as the same shall hereafter become due and that all deferred payments on the purchase price of said stock of the Yolo County Consolidated Water Company hereby purchased shall bear interest at the rate of five per cent per annum payable semi-annually from date hereof until paid; the payment

18 *Power and Irrigation Company of Clear Lake*

of the amount to be paid in bonds of Central California Power Company to be reckoned or computed as made at the date of the acceptance of said bonds and their delivery to the parties of the second part; and all net income of the Yolo County Consolidated Water Company arising from irrigation or otherwise shall be applied as a credit on said interest.

IN WITNESS WHEREOF said parties have executed this agreement the day and year first above written.

(Signed) E. P. VANDERCOOK,
CAPAY DITCH COMPANY—8789 shares. [15]

By J. CRAIG,
President.

And L. D. STEPHENS,
Secretary.

STEPHENS AGRICULTURAL AND
LIVE STOCK COMPANY—400 shares.

By J. L. STEPHENS,
President.

And NANNIE STEPHENS,
Tem. Secretary.

BANK OF WOODLAND—400 shares.

By L. D. STEPHENS,
President.

And J. CRAIG,
Secretary.

J. L. STEPHENS.

N. A. HAWKINS—135 shares.

J. J. STEPHENS.

L. D. STEPHENS—18 shares.

P. N. ASHLEY—100 shares.

KATE S. CRAIG. [16]

That the said Vandercook, at the time of making and entering into the said agreement hereinabove set forth, and thenceforward, was acting in co-operation with the aforesaid corporations Central Counties Land Company, California Industrial Company, and Central California Power Company. That pursuant to the said agreement the said Vandercook, on the 19th day of January, 1907, paid to the parties of the second part thereto the sum of \$91,250.00, \$51,250.00 of which said sum was paid in cash, and \$40,000.00 of which said sum was paid and discharged by delivery to the said parties of the second part to said agreement of 533 shares of the capital stock of the said Central Counties Land Company, a corporation, which said shares of stock the said parties of the second part to said agreement accepted at the rate of \$75.00 per share, and the sum of \$25.00 in cash, which said stock and cash the said parties did then and there purchase and receive of and from said E. P. Vandercook in lieu of, and as a substitute for, cash in the sum of \$40,000.00; and the said E. P. Vandercook duly delivered to the California Safe Deposit and Trust Company, a corporation, of San Francisco, California, bonds of said corporation Central California Power Company in the amount of \$258,750.00, in the form and manner provided for in the said agreement, and the said parties of the second part to the said agreement, on the 31st day of January, 1907, pursuant to the said agreement, duly deposited with said California Safe Deposit and Trust Company certificates representing 9,424 shares of the capital stock of the Yolo County Consolidated

Water Company, and at divers times thereafter deposited with said California Safe Deposit and Trust Company, pursuant to said agreement, certificates representing 440 additional shares of the capital stock of said Yolo County Consolidated Water Company, making a total of 9,864 shares of [17] said stock so deposited in escrow with said California Safe Deposit and Trust Company.

That thereafter, and pursuant to the said agreement, the said E. P. Vandercook, on the 29th day of March, 1907, paid to the said parties of the second part to said agreement, on account of interest due on bonds of the said Yolo County Consolidated Water Company, the sum of \$2,094.37.

That thereafter, and pursuant to the said agreement, the said E. P. Vandercook, on the 22d day of July, 1907, paid to the said parties of the second part to said agreement the sum of \$8,320.75, said amount being the amount of interest then due on the purchase price of said stock, at the rate of five per cent per annum, pursuant to the terms of said agreement.

That thereafter, on the 18th day of November, 1907, the said E. P. Vandercook paid to the said parties of the second part to the said agreement the sum of \$19,570.75, being all interest then due on bonds and on the purchase price of said stock, and all interest to become due under said agreement to and including April 1, 1908.

That, as was contemplated and provided for in said agreement, the defendant Yolo County Consolidated Water Company, therein referred to, paid out and expended for the acquisition of additional prop-

erty for a water system and for the storage of water the sum of \$86,060.50, such payment being made at divers times, as follows:

On or about the 19th day of January, 1907, the sum of \$48,955.25.

On or about the 31st day of January, 1907, the sum of \$325.00.

On or about the 31st day of January, 1907, the sum of \$3,132.50. [18]

On or about the 31st day of January, 1907, the sum of \$33,330.00.

On or about the 26th day of February, 1907, the sum of \$292.75.

On or about the 26th day of October, 1907, the sum of \$25.00.

That all of the said sums, together with interest due thereon, were, pursuant to the terms of the said agreement, and at the special instance and request of the parties of the second part to said agreement, repaid and returned to the defendant Yolo County Consolidated Water Company by the said Vandercook on the days and dates, and in the amounts hereinabove set forth.

That the parties of the second part to said agreement of January 19, 1907, for a good and valuable consideration, covenanted and agreed with said E. P. Vandercook to waive, and did waive, any and all rights conferred upon them or any or either of them, in and by that certain paragraph of said agreement wherein it was stipulated that "should the party of the first part (said Vandercook) fail to make any of the additional payments of principal or interest

22 *Power and Irrigation Company of Clear Lake*

herein provided, at the time the same became due, or fail to perform his part of this agreement, then in that event the undersigned party of the first part shall lose all rights to purchase said property and all moneys paid thereon shall be retained as a consideration for the execution of this agreement, and the party of the first part shall have no right to recover any portion of such payment.”

XIV.

That the authorized issue of the capital stock of the defendant Yolo County Consolidated Water Company was ten thousand (10,000) shares, and that less than the whole amount of said [19] capital stock of said corporation, to wit, 9,864 shares, was sold and delivered in escrow as aforesaid.

XV.

That the said 533 shares of the capital stock of the said Central Counties Land Company was, under the terms of the said agreement hereinabove set forth, thereafter issued and delivered to the parties of the second part to said agreement, and that contemporaneously with such delivery the parties of the second part to said agreement made and executed an instrument intended, purporting, and supposed by said Vandercook and by said Central Counties Land Company to convey unto said Central Counties Land Company all of the lands and property referred to in said agreement as having been purchased from the Spring Valley Water Company and its associate companies, and also other lands owned by the defendant Yolo County Consolidated Water Company bordering on said Clear Lake and Cache Creek in

Lake County, California, but that in fact the description contained in said instrument of conveyance did not cover and include, and was well known to said parties of the second part to said agreement of January 19th, 1907, not to describe or include all the property so purchased from said Spring Valley Water Company and its associate companies as provided for in said agreement, but that property of a very great value so purchased as aforesaid from said Spring Valley Water Company and its associate companies was not described in or conveyed by said deed.

That it was the true intent and meaning of the aforesaid agreement of January 19th, 1907, that said Spring Valley property so to be conveyed pursuant to the terms thereof should be conveyed to said Central Counties Land Company free and clear of and from any and all liens and encumbrances, and in the same condition as to its title that the same was in when it was purchased from said Spring Valley Water Company, and its allied and associate companies, but in truth and in fact, when the said [20] lands were so attempted to be conveyed and were, in fact, partly conveyed as aforesaid to said Central Counties Land Company, the same had, subsequent to the date of the conveyance by the Spring Valley Water Company, and its allied and associate companies, to the parties of the second part to said agreement and prior to the conveyance, or attempted conveyance, thereof to said Central Counties Land Company, become encumbered by a deed of trust or mortgage given to secure a bonded indebtedness of two hundred twenty-five thousand (\$225,000.00) dol-

lars, and that the lien thereof has never been at any time removed.

That the legal title to the ditches, dams, flumes, rights of way, and property above referred to was not, at the date of said agreement, vested in said defendant Yolo County Consolidated Water Company, and that the same was not transferred to said corporation within one year from the date of said agreement as provided in said agreement.

That the defendant Yolo County Consolidated Water Company did not receive from the stockholders of said corporation, and from the various corporations controlled by said stockholders, as provided for in said agreement all riparian rights (except the right to take water for live stock or domestic purposes, for lands bordering on Cache Creek), or any riparian rights whatever.

That the said E. P. Vandercook did not make to the parties of the second part to said agreement the additional payment of \$3.33 per share due on the 15th day of January, 1908, as called for by said agreement, nor did he make the additional payment of \$3.33 per share due on the 15th day of July, 1908, as called for by said agreement, nor did he make the additional payment of \$3.33 per share due on the 15th day of January, 1909, as called for by said agreement, but, by the agreement of all of the parties to said agreement, the provision therein as to the times for making the said payments was waived, and the time for the [21] making thereof was duly and regularly extended and continued, from time to time, and the time for making the said payments was

open on the 24th day of March, 1912, when the said agreement was canceled and rescinded as hereinafter set forth.

XVI.

That on the 3d day of March, 1908, the defendants Joseph Craig and Capay Ditch Company were owners and holders of the capital stock of said Central Counties Land Company, and on said day, said defendants entered into a certain agreement for a merger of all of the interests of the above-named Vandercook under the aforesaid agreement, and all of the capital stock of the said Central Counties Land Company, the California Industrial Company, and the Central California Power Company, which said merger agreement (by which title the same is hereinafter referred to) was duly signed by the said Vandercook and by the defendants Joseph Craig and Capay Ditch Company, and by each and all of the other then stockholders of the said three corporations last above named, and which said merger agreement was and is in the words and figures following, to wit: [22]

[Agreement, March 3, 1908, Between Shareholders of Central Counties Land Co. et al. and E. P. Vandercook.]

THIS AGREEMENT made and entered into this THIRD day of March, 1908, between the undersigned, shareholders of the CENTRAL COUNTIES LAND COMPANY, the CENTRAL CALIFORNIA POWER COMPANY, the CALIFORNIA INDUSTRIAL COMPANY, and E. P. VANDERCOOK,

WITNESSETH:

THAT WHEREAS the said undersigned stockholders are the owners respectively of the number of shares in the said respective corporations set opposite their signatures hereto and being all of the issued capital stock of said corporations.

AND WHEREAS the said Vandercook is the owner of an option to purchase all of the issued capital stock of the Yolo County Consolidated Water Company; and is the owner of all of the issued capital stock of the California Industrial Company;

AND WHEREAS the Clear Lake Power and Irrigation Company is desirous of acquiring the stock of said corporations and the said option;

NOW THEREFORE IT IS AGREED AS FOLLOWS:

(1.) That all of the capital stock in the said corporations held by the signers of this agreement and being all of the issued stock of said corporations and the said option shall be transferred, assigned, set over, and exchanged to and with the said Clear Lake Power and Irrigation Company, in consideration of the issuance, as hereinafter provided for, of 49,999 shares of the capital stock of the said Clear Lake Power and Irrigation Company.

(2.) It is further agreed, that the said Vandercook shall receive 16,777 shares out of said 49,999 shares of the capital stock of the said Clear Lake Power and Irrigation Company, for and in consideration of One thousand shares of the capital stock of the Central Counties Land Company, represented by Certificate Numbers 41 and 102, and for and in

consideration of all of the issued stock of the California Industrial Company, [23] and for and in consideration of 7,867 shares of the capital stock of the Central California Power Company (which said option and stock shall be turned over, as aforesaid, to the said Clear Lake Power and Irrigation Company).

The remaining 33,222 shares of the said 49,999 shares of the capital stock of the said Clear Lake Power and Irrigation Company shall be distributed among the parties hereto in proportion to the respective amounts actually contributed by them or their assignors or predecessors in interest to the assets or maintenance of said corporations, that is to say, for each \$100 of value actually paid in or contributed, in money or land, by the parties hereto or by their assignors or predecessors in interest (exclusive of services rendered) to the assets or maintenances of said corporations or either of them there shall be transferred and delivered to such party nine and one-half shares of the capital stock of the said Clear Lake Power and Irrigation Company. The amount so paid or contributed in money or land by the parties hereto or by the assignors or predecessors in interest is set forth opposite their respective names and is hereby accepted by each of the signers hereto as a correct statement of the amount so paid or contributed.

IT IS AGREED that no fractions of shares of stock of the Clear Lake Power and Irrigation Company be issued but that the number of whole shares nearest the fractional number shall be issued.

28 *Power and Irrigation Company of Clear Lake* .

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written. [24]

STOCKHOLDERS IN THE CENTRAL COUNTIES LAND COMPANY.

Signature of Stockholders.	Share Held.	Amt. Paid.	Shares in Clear Lake Power and Irrigation Co.
Geo. D. Gray	200	\$15,200.00	1444
Home Realty Co.	24	1,824.00	173
Anson S. Blake	50	3,800.00	361
E. P. Vandercook	637	41,733.00	3965
E. P. Vandercook	1000	Inc. above	per agreement
E. P. Vandercook	25	1,875.00	178
E. P. Vandercook, Trustee			
J. S. Herman, Trustee	230	7,500.00	713
Edward O. Allen	1	1.00	none
Ramon Roca	500	38,000.00	3610
Oscar Sutro	6	375.00	36
Jose Costa	5	375.00	36
Newman Kline	50	5,000.00	475
Jno. L. Clem Jr.	15	1,140.00	107
Hiram W. Johnson	472	19,972.00	1897
Edward O. Allen, Trustee	771	50,771.00	4823
A. F. Cornwall	10	760.00	72
Capay Ditch Co.	633	48,133.00	4572
By J. Craig, Pres.			
By L. D. Stephens, Sec.			
James Conning	30	2,250.00	213
A. S. d'Avila	390	7,150.00	679
Emily R. Newton	580	30,580.00	2905
D. N. Duffy	100	7,600.00	722
W. D. Huntington	36	2,700.00	256

CALIFORNIA INDUSTRIAL COMPANY.

E. P. Vandercook.	All issued stock.	
YOLO COUNTY CONSOLIDATED WATER COMPANY.		
E. P. Vandercook	\$61,250.00	5819

STOCKHOLDERS IN THE CENTRAL CALIFORNIA POWER COMPANY.

Geo. D. Gray	200	nothing	none
Home Realty Co.	24	"	"
Anson S. Blake	50	"	"
E. P. Vandercook	7867	per agreement	
Edward O. Allen	1	nothing	none
Ramon Roca	500	"	"

Issue for these holdings is covered by issue for holdings in Central Counties Land Co.

Signed by all other stockholders. [25]

That the document referred to in the above and foregoing merger agreement as "an option to purchase," is the agreement of purchase and sale, dated the 19th day of January, 1907, and first hereinabove set forth.

That the Clear Lake Power and Irrigation Company referred to in the agreement for merger last hereinabove set forth, was a corporation duly organized under the laws of the State of California, having an authorized capital of ten million dollars, divided into one hundred thousand shares of the par value of one hundred dollars each.

That after the execution of the above and foregoing merger agreement, the Board of Directors of the said Clear Lake Power and Irrigation Company, at a meeting duly and regularly called and assembled, duly passed and adopted a resolution in words and figures following, to wit: [26]

[Resolution of Board of Directors of Clear Lake Power and Irrigation Co.]

"RESOLVED THAT WHEREAS a certain agreement dated the 3d day of March, 1908, has been made and entered into by and between certain stockholders of the Central Counties Land Company, the Central California Power Company, the California Industrial Company, and E. P. Vandercook.

AND WHEREAS in and by the aforesaid agreement it is provided that the owners of the issued stock in the said corporations and the owner of certain rights and options shall transfer and convey the same over to this corporation in consideration of the

issuance of 49,999 shares of the capital stock of this corporation;

AND WHEREAS in the opinion of this Board of Directors it is to the best interest of this corporation to issue the said stock for the said consideration, and thereby unite the interests in certain lands about Clear Lake and certain water rights and power privileges and certain irrigation interests;

NOW, THEREFORE, BE IT RESOLVED that this corporation will, so soon as the said stock of the said corporations and the said rights referred to in said agreement shall be ready to be passed over to this corporation, issue 49,999 shares of its capital stock for and in consideration thereof; and the President and Secretary of this corporation are hereby authorized, empowered and directed, for and in the name of this corporation, and as and for its corporate act, to carry this resolution into effect and to issue in an appropriate manner for that purpose, 49,999 shares of the capital stock of this corporation and to deliver the same to the respective parties entitled thereto, upon receiving the subscribed capital stock of the Central Counties Land Company, the Central California Power Company, and the California Industrial Company, and other rights and property referred to in the aforesaid agreement between the stockholders of the said corporations and the said E. P. Vandercook, dated the 3d day of March, 1908." [27]

That thereafter the said Clear Lake Power and Irrigation Company made out certificates of its shares of stock to the number and in the manner

called for by said agreement, and at all times thenceforward held the same in readiness for delivery, upon receiving all of the shares of the capital stock referred to in the merger agreement last hereinabove set forth.

That the defendants Joseph Craig and Capay Ditch Company were the owners, upon the books of the said Central Counties Land Company, of 634 shares of its capital stock, but that the said Craig and the said Capay Ditch Company, although parties to the aforesaid merger agreement, failed, refused and neglected, and at all times thenceforward failed, refused and neglected so to turn in their said stock to the said Clear Lake Power and Irrigation Company.

That the said Clear Lake Power and Irrigation Company was unwilling to issue any of its capital stock unless each and all of the signers of the agreement of merger last hereinabove set forth should unite in turning in and turn in all of the said stock. That, nevertheless, by the mutual consent and acquiescence of all of the parties to the aforesaid agreement, and of all of the stockholders of said corporations, the said merger in said merger agreement provided for was treated as an accomplished fact, and the said parties to the said merger agreement proceeded to transact business connected with the said enterprise in the name of the said Clear Lake Power and Irrigation Company.

That the principal part of the costs and expenses of conducting such business was, however, borne by said Central Counties Land Company.

That in the month of June, 1911, the said enter-

prise was in the condition which has been hereinabove described.

That the assets owned by the said Central Counties Land [28] Company, California Industrial Company, and Central California Power Company the ownership of the stock of which said corporations was to be merged as aforesaid, were of very great potential value, but that a considerable part thereof was in the form of agreements, and a considerable part thereof was subject to mortgage, and that the said properties did not have an immediate or market value equal to the liabilities of the said corporations, although the potential value thereof was far in excess of such liabilities, and that the said assets, aided and assisted by the capital necessary to pay off encumbrances, and to handle and utilize the same, would not only have been sufficient to have paid off all of the outstanding liabilities of all of the said corporations, but would have left a surplus of at least \$1,500,000.00 over and above said liabilities, but that at said time the financial situation of the said corporations was such that unless within one year from the first day of June, 1911, such capital could be interested and obtained, said enterprise would wholly fail, and the creditors of the said corporations would receive but a small percentage, if anything, on account of their claims, and that there would be absolutely no surplus for the stockholders.

That one of the chief assets in the said enterprise affording, in connection with others of the assets, the principal inducement for capital to enter upon and

interest itself in the said enterprise was the aforesaid agreement of January 19th, 1907, between the said Vandercook and the said defendants Joseph Craig and Capay Ditch Company, and other persons, a copy of which said agreement is first hereinaabove set forth.

That the condition of the said enterprise, and the relation of the said Vandercook agreement of January 19th, thereto was well known to all the stockholders and officers of the said Central Counties Land Company. [29]

That the defendant Joseph Craig was not only a stockholder in the said Central Counties Land Company, as aforesaid, but was, on the said first day of June, 1911, and ever since the 23d day of December, 1907, had been, and thenceforward at all times continued to be, an officer or trustee of the said Central Counties Land Company, and was also the President of the defendant Yolo County Consolidated Water Company, and was also the President of the defendant Capay Ditch Company.

XVII.

That on or about the first day of June, 1911, the Board of Directors of the said Central Counties Land Company, realizing the aforesaid financial condition of the said Central Counties Land Company, and that in order to prevent the total failure of the said merger and the financial ruin of said three corporations whose stock was covered by said merger agreement, it would be necessary to secure additional capital, employed and sent to New York one J. W. Northup, and directed the said Northup to take up

the matter of interesting capital in the said enterprise with New York financiers. That the said Northup was furnished with maps and engineering reports, statements and report of counsel, including a printed report of one W. A. Cattell, an engineer, a copy of which printed report is hereunto annexed, marked Exhibit "A" and made a part hereof.

XVIII.

That the said Northup went to New York and laid the said matter before the defendant William A. Brady, a man of large affairs, who was then, and ever since has continued to be, in close touch with the defendant E. L. Phillips and the defendants White and Company, Archibald S. White and C. L. Parmalee. That said defendant E. L. Phillips was at said time, and ever since has been and still is, an engineer in the employ of the defendant [30] White and Company, and a participant in any profits derived by said defendant White and Company from the business enterprises in which he rendered or renders them services.

That the said Northup, through the said defendant William A. Brady, aroused the interest of the said defendants E. L. Phillips, William A. Brady, Archibald S. White, C. L. Parmalee and White and Company in the said enterprise, and laid the said maps and reports before the said defendants William A. Brady and E. L. Phillips, which said maps and reports, as plaintiff is informed and believes, and upon such information and belief alleges, were in turn placed before the said defendants Archibald S. White, C. L. Parmalee, Roy M. Pike, and White and Company.

That in the month of August, 1911, in further pursuance of said enterprise, the said Central Counties Land Company, acting in aid and furtherance of interesting capital in said enterprise, caused one Ottomar H. Van Norden, a broker of the City of New York, to further present and press the said enterprise upon the attention of the said defendants William A. Brady, E. L. Phillips, Archibald S. White, C. L. Parmalee and White and Company.

That by the 15th day of October, 1911, the said parties had all become thoroughly interested in the possibilities of the said enterprise, and the defendant E. L. Phillips, with the knowledge, consent and approval of the defendants William A. Brady, Archibald S. White, C. L. Parmalee, and White and Company, advised the said Central Counties Land Company that he was prepared to leave New York on the 28th day of October, 1911, and inspect the property in the State of California embraced in said enterprise, and that he, the said defendant E. L. Phillips, and that the said defendants William A. Brady, Archibald S. [31] White, C. L. Parmalee, and White and Company had arranged for the necessary money to carry through the deal.

That on the following day the said defendant E. L. Phillips advised said Central Counties Land Company that he and the said defendants William A. Brady, Archibald S. White, C. L. Parmalee, and White and Company had considered the proposition carefully and had decided to go into it.

That on the 19th day of October, 1911, the said defendant E. L. Phillips addressed and mailed to

Rudolph W. Van Norden, then and ever since a member of the Board of Directors and a trustee of said Central Counties Land Company, and a brother of the above-named Ottomar H. Van Norden, a letter in the words and figures following, to wit: [32]

[Letter of E. L. Phillips to Rudolph W. Van Norden.]

There has been submitted to me this morning by your brother, "A suggested offer" covering the Clear Lake proposition. I have gone over this offer very carefully with your brother, and while there are many points in it that are rather severe as it stands, yet when we come to get together personally, these can be thoroughly explained, and various clauses put in the agreement to mutually protect our interests.

I wish to have you feel that we have considered this proposition carefully and have decided to go into it if our moves are properly protected.

We want to deal fairly with you people and have you feel the same toward us. We believe that if the proposition has the merit which you have indicated that there will be profit in it for all concerned.

The funds necessary to carry out this deal are all arranged, but you must remember that this is not simply a loan that we are considering, but the investment of a large sum of money to carry out the proposition completely.

The banking houses are prepared to buy the bonds and furnish the money as fast as the earnings are sufficient to warrant such a deal, inasmuch as you know the certainty of these earnings, provided the

funds are furnished for the construction. This seems to me to be a plain sailing proposition.

You will readily understand that I am leaving New York at a considerable sacrifice to our business here, as we have a number of operations going on at the present time that urgently demand my personal attention. I wish, therefore, that you would be frank and wire me, or your brother, before the 28th inst. that the proposition will be held intact and ready for us to carry out our plans, provided I come to San Francisco. In no event will I leave New York unless I am absolutely certain that the deal can be carried through.

Yours very truly,

(Signed) E. L. PHILLIPS.

ELP/DH. [33]

That the said communications were submitted to the defendant Joseph Craig, and he fully understood the contents thereof. That at the stage of the proceedings just described, the said defendant Joseph Craig, in violation of his fiduciary relations to the said Central Counties Land Company, which he bore thereto as a member of its Board of Directors, conceived a fraudulent scheme to secretly negotiate with the said defendants William A. Brady, E. L. Phillips, Archibald White, and C. L. Parmalee, and with the said defendant White & Company, and to bargain with them to bring about the rescission and cancellation of the aforesaid contract dated January 19th, 1907, made with the said Vandercook, and to wreck and destroy the aforesaid merger, and to wreck and destroy said Central Counties Land Com-

pany, to the end that the said defendant Craig might receive a larger sum of money upon the stock owned by him in the said defendant corporation Yolo County Consolidated Water Company than was provided for in the said agreement with the said Vandercook, dated January 19th, 1907, and that he might also secretly receive a large commission in money, stocks, and bonds on the transaction. That to that end the said defendant Craig secretly sent an agent to New York who, unbeknown at the time to the Central Counties Land Company, opened negotiations with the said defendants Brady, Phillips, White and Parmalee, and with the said defendant White & Company, and, through the said agent, and by means of letters and telegrams, the said defendant Craig entered into a combination and conspiracy with the said defendants Brady, Phillips, White and Parmalee, and with the said defendant White & Company, to wreck the aforesaid merger and to bring about the cancellation and rescission of the aforesaid contract with the said Vandercook, dated January 19th, 1907, and to wreck, ruin and destroy the said Central Counties [34] Land Company, and to acquire the said enterprise for themselves at a relatively small cost, provided said defendant White and Company should be satisfied, after a personal inspection of the properties by defendant Phillips, of the practicability and value of the aforesaid enterprise.

That at all said times said defendants Brady, White, Phillips, Parmalee, and White and Company well knew of the fiduciary relations in which the

said defendant Craig stood towards said Central Counties Land Company, and had in their possession and were familiar with the contents of the aforesaid report Exhibit "A," and had in their possession full schedules of the lands then owned and claimed by said Central Counties Land Company, full statements of its assets and liabilities, and an elaborate and complete map of the said Clear Lake and of the lands owned and claimed by said Central Counties Land Company, and its aforesaid allied corporations, on said Clear Lake, including the land known as the Spring Valley ranch, all of which said maps, reports, schedules, and information had been laid before the said defendants Brady, Phillips, White, Parmalee and White and Company through the agency of said J. W. Northup and said Ottomar H. Van Norden.

That thereupon, and in pursuance of said fraudulent scheme and conspiracy, the defendant E. L. Phillips came to the State of California with the said agent of the said defendant Joseph Craig, arriving in said State of California on or about the 3d day of December, 1911, and thereupon the said defendant Craig and his said agent, and the said defendant Phillips, went to said Clear Lake and spent several days there together in looking over the aforesaid enterprise.

That said defendant Phillips became and was convinced, from said personal examination and inspection, that said [35] enterprise was practicable and of great value. That, as a part and parcel of the aforesaid fraudulent scheme and conspiracy, it

was agreed between the said defendants Craig and Phillips, with the full knowledge and consent of the said defendants Brady, White, Parmalee, and White and Company, that the said defendant Craig should cause a corporation to be organized as an agency or instrumentality for the purpose of carrying out the aforesaid fraudulent scheme and conspiracy, and with the full knowledge and consent of the said last named defendants, that the said defendant Craig would bring it about that, notwithstanding the existence of the aforesaid contract with the said Vandercook, dated January 19th, 1907 and notwithstanding the fact that the said contract was in full force and effect, an agreement should be made over to said proposed corporation, wherein and whereby all of the parties of the second part to the said Vandercook agreement of January 19th, 1907, should purport to agree to sell to the said defendant Craig and his assigns all of the aforesaid stock covered by the said Vandercook agreement of January 19th, 1907, and that said defendant Craig should assign, or cause to be assigned, the said agreement to such proposed corporation. And said defendant Craig further then and there agreed with his said co-conspirators to bring it about that said parties of the second part to said Vandercook agreement would bring about a cancellation and rescission of the said Vandercook agreement, upon and after the accomplishment of which they would turn over and deliver all of the said stock of the defendant Yolo County Consolidated Water Company to the said corporation so proposed to be organized, and that

the said proposed corporation should immediately thereupon institute condemnation proceedings to cover all of the lands which each and all of the said defendants well knew the said [36] Central Counties Land Company deemed essential to said enterprise, and which the said Clear Lake Power and Irrigation Company, and all the parties to the aforesaid merger agreement, desired and intended to cause to be acquired as a part and parcel of the aforesaid enterprise. That it was intended by said conspirators that, as a result of such rescission of said Vandercook agreement, it would be impossible to finance the said enterprise and that the stockholders of the said Central Counties Land Company would become discouraged and would decline to advance more moneys to the said enterprise, and that the parties to the said merger agreement would all fail, refuse and neglect to go ahead and proceed therewith; that the aforesaid enterprise would be wrecked, and that they, the said conspirators, would be able thereupon to take up and acquire all of the valuable properties and rights of said Central Counties Land Company, and of said California Industrial Company, and of said Central California Power Company, at a cost to them of little or nothing.

That pursuant to the said fraudulent scheme and conspiracy, and in furtherance thereof, said defendant Craig and his said co-conspirators caused the defendant Yolo Water and Power Company to be incorporated on the 11th day of December, 1911, under the laws of the State of California, with an au-

thorized capital stock of ten million dollars, divided into one million dollars of preferred stock and nine million dollars of common stock; that the incorporators of said defendant Yolo Water and Power Company were each and all dummies and agents employed for the purpose of effecting said incorporation by said defendant Craig and his said co-conspirators; that the said defendant Craig proceeded to and did procure the agreement concerning said stock which he had planned with his said co-conspirators to [37] procure as aforesaid. That immediately upon the organization of the said defendant Yolo Water and Power Company, the said defendant Craig and his aforesaid co-conspirators, defendants herein, caused to be made over to said corporation said agreement for the aforesaid shares of the capital stock of the defendant Yolo County Consolidated Water Company referred to, and agreed to be sold to the said Vandercook, in and by the aforesaid agreement dated January 19th, 1907.

That at or about the same time the said Spring Valley ranch, and the title thereto, were in the following situation: The said Spring Valley ranch is a tract containing one thousand and five (1005) acres, or thereabouts, and is situated near the outlet of the said Clear Lake, and covers in places one side, and in other places both sides, of Cache Creek, the natural outlet of the said lake. Said ranch contains a valuable dam site and includes property upon which it was well known to the said defendant Yolo Water and Power Company, and to each and all of the said conspirators, the said Central Counties

Land Company and the said parties to the said merger agreement intended to erect a dam where-with to dam up and control the waters of the said Clear Lake. That the fee simple to said land was owned by said Central Counties Land Company, but that on the 18th day of November, 1907, the said land had been mortgaged, as the said defendants and each of them well knew, to the defendant Capay Ditch Company, to secure the payment by said Central Counties Land Company of three several promissory notes, the principal of which aggregated the sum of \$24,570.75. That the said mortgage, as each and all of the said defendants well knew, was in the form of a deed absolute, but was nevertheless intended to be and was a mortgage and had been executed pursuant to the authority [38] contained in and conferred upon the President and Secretary of said Central Counties Land Company, by a resolution duly adopted at a regularly called and assembled meeting of the Board of Directors of said Central Counties Land Company, at which said meeting said defendant Joseph Craig was present, and which said resolution so adopted was in the words and figures following, to wit: [39]

[Resolution of Board of Directors of Central Counties Land Co.]

BE IT RESOLVED that this corporation offer and deposit as security for the payment of the notes authorized in the foregoing resolutions, such security to be returned in the event of such payment, the deed of this corporation conveying to the Capay Ditch Company, a California corporation, that cer-

44 *Power and Irrigation Company of Clear Lake*

tain property in Lake County, California, conveyed to this corporation by said Capay Ditch Company by deed dated January 24th, 1907, and recorded in Volume 39 of Deeds, at Page 355 and following, Records of Lake County, excepting therefrom the swamp and overflowed lands therein described; and also as such security debenture certificates of this company as authorized August 13th, 1906, of the face value amounting to Five Thousand Dollars (\$5,000.00); and

BE IT FURTHER RESOLVED that the President and Secretary of this corporation be and they are hereby authorized and directed to execute under its official seal the grant, bargain and sale deed of this corporation, as aforesaid, and also to execute and issue debenture certificates of this corporation as aforesaid, and to deposit the same as security for the payment of said notes, and to do any acts which they may deem necessary to effectuate the intent of this resolution. [40]

That although said co-conspirators well knew that said instrument was a mortgage, nevertheless the said defendant Craig, in further pursuance of said fraudulent scheme and conspiracy, caused and brought it about that said defendant Capay Ditch Company, the said mortgagee, on the 18th day of December, 1911, signed, through him, the President, and one L. D. Stephens, the Secretary, an instrument purporting to be a deed absolute to the defendant Yolo County Consolidated Water Company of said Spring Valley ranch, but kept the said instrument secret and unrecorded until June 17th, 1912.

That said deed purports to have been executed by said Craig as President, and by said Stephens as Secretary, of said defendant Capay Ditch Company, to themselves. That they kept and retained said purported deed during and after the execution thereof and until they handed it to said defendant Yolo Water and Power Company as hereinafter alleged.

That on the same day, and at the same time, said Craig and said Stephens, in the name of said defendant Yolo County Consolidated Water Company, signed an instrument, in form a deed absolute, wherein the said Yolo County Consolidated Water Company purports to convey said Spring Valley Ranch to said defendant Craig and one J. L. Stephens who was and is a relative of said Craig and a party of the second part to said Vandercook agreement. That said J. L. Stephens, at said time and at all times, had actual notice and knowledge that said instrument so executed by said Central Counties Land Company to said defendant Capay Ditch Company was and is a mortgage. That thereupon said defendant Craig and said Stephens, pursuant to and in furtherance of said fraudulent scheme and conspiracy, took said two instruments so signed by said Craig as President to the City of Oakland, California, and there, on the 20th day of December, 1911, handed the same [41] to one of their agents and dummy directors in said defendant Yolo Water and Power Company, and did also, in furtherance of and pursuant to said fraudulent scheme and conspiracy, hand to said agent and dummy director an instru-

ment in form a deed absolute purporting to convey the said Spring Valley Ranch from them, the said defendant Craig and Stephens, to the said defendant Yolo Water and Power Company.

That said instrument also was kept secret and was not recorded until June 17th, 1912.

That as plaintiff is informed and believes, and on such information and belief avers, said defendant Yolo Water and Power Company thereupon, and in consideration of said purported conveyance and of said contract to sell said stock, issued or agreed to issue to said defendant Craig and to said Stephens, or to said defendant Craig, certificates purporting to represent a very large amount, if not all, of both its preferred and common stock. That the actual amount so issued can be made known only upon a discovery. But nevertheless, as part and parcel of said scheme and conspiracy, the entire \$10,000,000.00 of said capital stock was, for the consideration aforesaid, treated as issued or subscribed for, and thereupon said conspirators caused said corporation to comply with certain of the forms of law proper to a bond issue of \$10,000,000.00, and thereafter a so-called deed of trust, dated January 1, 1912, was acknowledged before a Notary Public on January 9th, 1912, but was also, by direction and at the instance of said conspirators kept secret and not recorded until the 17th day of June, 1912.

That the defendant Yolo Water and Power Company received and accepted the said instruments which were in form absolute deeds as aforesaid, as the agent of said conspirators, with full knowledge

and notice that the said instrument, in form a [42] deed so executed as aforesaid to said defendant Capay Ditch Company by said Central Counties Land Company was, in fact, a mortgage. That the said defendant Yolo Water and Power Company did not receive the same in good faith, for a valuable consideration, and without notice.

That on said 17th day of June, 1912, said so-called deed of trust was recorded in the office of the County Recorder of the County of Lake, State of California, Volume I of Deeds at page 459, Lake County Records.

That at the time of taking the proceedings which purported to authorize the issue of said bonds, ten million dollars (\$10,000,000.00) of the capital stock of said defendant Yolo Water and Power Company had not been actually and in good faith subscribed for or issued.

That said so-called deed of trust purports to secure the payment of the said bond issue, and the property purporting to be mortgaged or placed in trust thereby specifically describes the aforesaid Spring Valley Ranch.

That the defendant Oakland Bank of Savings is named as the Trustee in said so-called deed of trust, and parted with no valuable consideration therefor.

That well knowing that the said contract with the said Vandercook, dated January 19th, 1907, was on the 24th day of January, 1912, in full force, operation, and effect, the said defendants, on said day and date, in further pursuance of said fraudulent scheme and conspiracy, caused the parties of the second

part to the said agreement of January 19th, 1907, with the said Vandercook (including the defendants Joseph Craig and Capay Ditch Company), to make, execute, and deliver to the said Vandercook a written instrument in the words and figures following, to wit: [43]

[Notice and Demand.]

“To E. P. Vandercook and to the Central Counties Land Company, a Corporation:

You and each of you will hereby take notice that the undersigned, and each and all thereof, hereby demand of and from you and each of you a full and complete performance of all the terms, conditions and provisions of that certain agreement made and entered into and of date the 19th day of January, 1907, wherein said E. P. Vandercook is named therein as party of the first part, and the Capay Ditch Company, a corporation, the Stephens Agricultural & Livestock Company, a corporation, the Bank of Woodland, a corporation, J. Craig, Kate S. Craig, J. L. Stephens, L. D. Stephens, J. J. Stephens, P. N. Ashley and N. A. Hawkins are named therein as parties of the second part, within the period of sixty (60) days from date hereof, that is to say, on, to wit, on or before the twenty-fourth day of March, 1912, at the Bank of Woodland, in the City of Woodland, County of Yolo, State of California not later than 12 o'clock noon on said last named day.

You and each of you will further take notice that the undersigned and each of them are ready, able and

willing to, and hereby offer to fully perform all the terms, conditions and provisions of said agreement to be by them and each of them kept and performed, and that they have deposited at the said Bank of Woodland in said City of Woodland, County and State aforesaid, good and sufficient grant, bargain and sale deeds duly acknowledged, and by their terms conveying all the land and property in said contract and agreement referred to and by them or any of them to be conveyed, as therein provided, conveying said properties to the parties therein specified; and also three certain promissory notes, in [44] the words and figures following, to wit:

\$5625.00 San Francisco, November 18, 1907.

On or before August 1, 1908, Central Counties Land Company, a California Corporation, promises to pay to the Capay Ditch Co., or order, at its office in the City of Woodland, State of California, the sum of Five Thousand Six Hundred and Twenty-five (\$5625.00) Dollars with interest commencing April 1, 1908, at the rate of Seven per cent (7%) Per Annum, both principal and interest payable in United States Gold Coin.

(Signed) CENTRAL COUNTIES LAND
COMPANY.

By L. S. LACY,
Vice-president.

By EDWARD O. ALLEN,
Secretary.

(Endorsed: E. P. VANDERCOOK,
J. DALZELL BROWN.

50 *Power and Irrigation Company of Clear Lake*

Demand, notice of non-payment and protest waived:

E. P. VANDERCOOK,
J. DALZELL BROWN.)

\$8320.75 San Francisco, Cal., November 18, 1907.

On or before August 1, 1908, Central Counties Land Company, a California corporation, promises to pay to the Capay Ditch Co., or order at its office in the City of Woodland, State of California, the sum of Eight Thousand Three Hundred and Twenty and 75/100 (\$8320.75) Dollars, with interest commencing January 19, 1908, at the rate of Seven Per cent (7%) per annum, both principal and interest payable in United States Gold Coin.

(Signed) CENTRAL COUNTIES LAND
COMPANY.

By L. S. LACY,
Vice-president.
EDWARD O. ALLEN,
Secretary.

(Endorsed: E. P. VANDERCOOK,
J. DALZELL BROWN.

Demand, notice of non-payment and protest waived:

E. P. VANDERCOOK,
J. DALZELL BROWN.)

\$10,625.00 San Francisco, Cal., November 18, 1907.

On or before August 1, 1908, Central Counties Land Company, a California corporation, promises to pay to the Capay Ditch Co., or order, at its office in the City of Woodland, State of California, the sum of Ten Thousand Six Hundred and Twenty-five

(\$10,625.00) Dollars, with interest from date at the rate of Seven Per Cent (7%) per annum, both principal and interest payable in United States Gold Coin.

(Signed) CENTRAL COUNTIES LAND COMPANY.

By L. S. LACY,

Vice-president.

EDWARD O. ALLEN,

Secretary. [45]

(Endorsed: E. V. VANDERCOOK.

J. DALZELL BROWN.

Demand, notice of non-payment and protest waived.

E. P. VANDERCOOK,

J. DALZELL BROWN.)

And also debenture certificates of the Central Counties Land Company, numbered consecutively from 582 to 591, both inclusive, of the denomination of Five Hundred Dollars (\$500.00) each.

That said deeds of conveyance, debenture certificates, and promissory notes, and all thereof, are now on deposit in said Bank of Woodland, and will so continue to be deposited thereat during said period of time above specified and all thereof, subject to your order, upon the payment by you to our credit at said Bank the full sum of Five Hundred and One Thousand Five Hundred and Seven and 62/100 Dollars (\$501,507.62) in gold coin of the United States of America.

In the event of your failure to pay and deposit at said bank within said period of time the said full

52 *Power and Irrigation Company of Clear Lake*

amount and sum of said Five Hundred and One Thousand Five Hundred and Seven and 62/100 Dollars (\$501,507.62) to our credit, and subject to our order, then, and in that event, we shall and do hereby elect to cancel, rescind and annul said referred to contract and agreement, and to, and we do hereby in such event, declare said referred to contract and agreement to be null and void, and of no force and effect, either in law or in equity; and in such event we do hereby notify you that upon the expiration of said period of time all your rights and privileges under and by virtue of said contract and agreement will terminate and end on said last-mentioned date.
[46]

And the undersigned, in the event of your failure to pay said sum of Five Hundred and One Thousand Five Hundred and Seven and 62/100 Dollars (\$501,507.62) within the time and at the place afore-said, shall consider themselves and each of them released from all the obligations of said agreement, and of and from every act by them to be performed thereunder.

Time is hereby expressly made of the essence hereof.

(Signed) CAPAY DITCH CO.,
[Seal]

By J. CRAIG,
President.

And L. D. STEPHENS,
Sec'y.

(Signed) STEPHENS AGRICULTURAL
AND LIVESTOCK CO.

[Seal] By J. L. STEPHENS,
President.
And F. W. STEPHENS,
Secretary.

(Signed) BANK OF WOODLAND,

[Seal] By L. D. STEPHENS,
President.
And J. S. CRAIG,
Secretary.

(Signed) J. J. STEPHENS,
L. D. STEPHENS.
N. A. HAWKINS.
KATE S. CRAIG.
J. CRAIG,
P. N. ASHLEY.
J. L. STEPHENS.

Dated, January twenty-fourth, 1912. [47]

That at the time of so delivering the said Notice to the said Vandercook, the said conspirators, and each and all of them, and each and all of the parties of the second part to the aforesaid agreement with said Vandercook dated January 19th, 1907, well knew that there was not due from the said Vandercook, for and on account of the said contract, the sum of five hundred one thousand five hundred seven and 62/100 (\$501,507.62) dollars, and that said sum was not then due and owing, or due or owing, and well knew that said sum would not be due and owing or due or owing from said Vandercook, or from any other person or persons, for or on account of the said

contract, on the said 24th day of March, 1912, and the parties of the second part to the said agreement of January 19th, 1907, and the said defendant conspirators, and each and all of them, well knew and had notice and were informed that neither the said Vandercook nor the said Central Counties Land Company had promised or agreed to make any payments under the aforesaid contract of January 19th, 1907, at Woodland, California, or at any place other than at the City and County of San Francisco, California, at which latter place the aforesaid contract with the said Vandercook was made, and at which latter place the said stock so agreed to be purchased by the said Vandercook was to be delivered to the said Vandercook upon final payment and completion of said contract, as provided for in said contract.

That all the interest due upon the bonds of the Yolo County Consolidated Water Company, and payable by the said Vandercook pursuant to the said agreement, was fully paid down to and including all interest due prior to the first day of October, 1908, and that all interest due on deferred payments on the purchase price of said stock mentioned in the agreement was paid down to and including the 19th day of January, 1908. [48]

That prior to the said 24th day of March, 1912, the said Vandercook had paid to the said parties of the second part to the said agreement, in principal and interest, for and on account of the said contract, the sum of \$121,335.87, and had paid out, at the special instance and request of the parties of the second part to said agreement of January 19th, 1907, pursu-

ant to the terms thereof, the sum of \$86,060.50.

That on said 24th day of March, 1912, the said parties of the second part to the said agreement with the said Vandercook did not have in their possession, custody or control, at Woodland, California, or elsewhere, the aforesaid shares of stock of the defendant Yolo County Consolidated Water Company covered by said agreement of January 19th, 1907, and were not in a position to, and could not, on said day deliver the same to the said Vandercook, or to any other person, at Woodland, California, but that on the said day and date the certificates representing the said shares of stock were in the custody of Frank J. Symmes, Esquire, Receiver of the California Safe Deposit and Trust Company, of San Francisco, California, an insolvent corporation, and were in the vaults of the said corporation in the City and County of San Francisco, State of California.

That on the 26th day of March, 1912, the said parties of the second part to the said agreement with the said Vandercook, obtained said certificates of stock, at San Francisco, California, from said Receiver of said California Safe Deposit and Trust Company, and thereupon, and without having procured the consent of the Railroad Commission of the State of California, attempted to sell, transfer, and deliver the same to the said defendant Yolo Water and Power Company, and that the said defendant Yolo Water and Power Company has ever since claimed to be, and now claims to be, the owner and holder thereof. [49]

That the defendant Capay Ditch Company, was, at

the time of such delivery, the owner and holder of 8,789 shares of the capital stock of the said defendant Yolo County Consolidated Water Company. That the said 8,789 shares of the capital stock of said defendant Yolo County Consolidated Water Company, and the certificates representing the same, were, as plaintiff is informed and believes, and therefore alleges, part of the assets and capital stock of the said defendant Capay Ditch Company, and could not be paid out or taken from the said defendant Capay Ditch Company without diminishing the capital stock of said corporation, but that nevertheless the said Capay Ditch Company attempted to and did receive, as a consideration for the aforesaid attempted sale thereof, certain money, stock and bonds of the said defendant Yolo Water and Power Company, and did thereafter, without taking any steps to lawfully decrease its capital stock, divide and distribute the same among the several stockholders of the said defendant Capay Ditch Company in proportion to their respective interests in the shares of stock held by them in the defendant Capay Ditch Company, and that the defendant Craig received a large share thereof on his own account, and that, as an executor, he also received a large share on account of the Estate of Kate S. Craig, deceased, one of the parties to the said agreement of January 19th, 1907, she having died on or about the 23d day of July, 1912.

That soon after receiving said stock, the said defendants Craig, Brady, Phillips, White, Hull, Jr., Parmalee, and White and Company, with the connivance, assistance and consent of the other defendants

hereto, caused the defendant Yolo Water and Power Company to issue and deliver to them instruments, in form bonds, of the par or face value of \$700,000.00, or thereabouts, which said bonds were a part of the bonds so issued [50] pursuant to the aforesaid proceedings, and said defendant White and Company, pursuant to said conspiracy, underwrote and promised to purchase \$2,500,000.00 par value of said bonds, to be paid for as the money was required and called by said defendant Yolo Water and Power Company, for land purchases and construction work and incidental expenses. That said defendant White and Company has marketed or resold some of said bonds, and still have \$1,800,000.00, or thereabouts, of said issue still on hand and undisposed of.

That plaintiff is informed and believes, and upon such information and belief avers, that there has been paid over to the said defendant Joseph Craig, and his agent aforesaid, as and for the commission and share of said defendant Craig in the moneys derived by and through the said fraudulent scheme and conspiracy, a large sum of money, the exact amount of which is unknown to this plaintiff, but which can be ascertained only upon a discovery, and that the said defendant Craig also received, in addition to the said sum of money, a number of the bonds, a block of the said preferred stock, and a large block of the said common stock of the said defendant Yolo Water and Power Company, the face or par value of the bonds and the amount of the preferred stock and common stock of said corporation so received by said defendant Craig being unknown to this plaintiff, and can

only be ascertained upon a discovery.

That, as plaintiff is informed and believes, and therefore alleges, there was similarly divided between and among the said defendants Pike, Brady, White, Phillips, Hull, Jr., Parmalee, and White and Company, as and for their share of the property obtained as profit or commission by and through the said fraudulent scheme and conspiracy, large sums of money, stock and bonds, the exact amount of which is unknown [51] to plaintiff, but which can be ascertained upon a discovery.

That having broken said contract with said Vandercook, and having effected through said breach and notice and acts the rescission thereof (said Vandercook having elected to treat same as a rescission), said conspirators, in furtherance of said fraudulent scheme and conspiracy, set about to secure for the said Yolo Water and Power Company, and indirectly for themselves as stockholders and bondholders therein, all of the properties and assets of said Central Counties Land Company, California Industrial Company, and Central California Power Company, which were essential to the aforesaid enterprise.

That to that end, on the 1st day of April, 1912, the defendant Yolo Water and Power Company, at the direction of said conspirators, filed in the Superior Court of the State of California in and for the County of Lake, a certain proceeding in condemnation, which said proceeding is entitled, Yolo Water and Power Company, a corporation, plaintiff, versus State of California, and others, defendants, and is

Action Numbered 2140 of the records of the said Court, and on the 10th day of April, 1912, filed in said court a proceeding in condemnation entitled, Yolo Water and Power Company, a corporation, plaintiff, versus Guilford L. Molesworth, and others, defendants, to which said action last named said E. P. Vandercook is a party defendant, and which is Action numbered 2143 of the records of the said court.

That in and by the said actions the said defendant Yolo Water and Power Company seeks to condemn all of the lands bordering upon or lying beneath the waters of the said Clear Lake, including lands belonging to said Central Counties Land Company, and its aforesaid allied corporations, and also seeks to condemn all of the riparian lands in Lake County, California, on Cache Creek, including lands essential to said [52] enterprise and belonging to one or more of said three allied corporations, and which stood and stand of record in the name of E. P. Vandercook, Arthur H. Goldsmith, and the defendant Joseph Craig, and others, all of which said lands had been acquired for the purposes of the said enterprise, and were deemed essential thereto and which as the said defendant Yolo Water and Power Company well knew, were held by the said persons above named in trust for one or more of said allied corporations.

That although the said respective actions have been pending since the said 1st and 10th days of April, 1912, as aforesaid, no summons therein has ever been served upon the said E. P. Vandercook or

upon the Central Counties Land Company and said allied corporations, or upon its or their Trustees, or upon any or either of them.

That the lands so standing in the name of defendant Joseph Craig, and embraced in said condemnation action Number 2143, are described as follows:

“The southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of Section 31; the north half of the southwest quarter, the northwest quarter of the southeast quarter, the west half of the northeast quarter and the northeast quarter of the northeast quarter of Section 32; the south half of the southeast quarter, the northwest quarter of the southeast quarter, the northeast quarter of the southwest quarter, the southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter of Section 29; the west half of the southeast quarter of Section 20; all in Township 13 North, Range 6 West.”

That said lands were purchased and acquired by said defendant Craig while acting for, and as the agent of, said Central Counties Land Company, and were paid for with the funds of said corporation, and said defendant Craig has, at all times prior to the time when the same were acquired by plaintiff, held the same in trust for said Central Counties Land Company, and now holds the same in trust for this [53] plaintiff as the successor in interest of said Central Counties Land Company.

That for many years prior to November 30th, 1911,

one L. J. Shuman was the agent and employee of said Central Counties Land Company, and that after the 30th day of November, 1911, said Shuman continued to render like service as the agent and employee of the directors of said corporation who, on and after said date became trustees for the benefit of the creditors and stockholders of said corporation. That one of said Trustees was the defendant Joseph Craig, as aforesaid. That said Shuman was, on the 1st day of April, 1912, and still is, in the employ of said Trustees.

That one S. T. Packwood was, on said 1st day of April, 1912, and for many years prior thereto had been, the owner and holder of a large quantity of land fronting on and partly submerged by said Clear Lake, which was essential to the aforesaid enterprise; that said land has several miles of frontage on said lake.

That said Central Counties Land Company, through several years, had a series of contracts with the said Packwood for the purchase of the said land, which said contracts were renewed from time to time, and the last one so made was by its terms to be and continue in full force and effect until July 15th, 1913. That the said Central Counties Land Company had paid to the said Packwood, for and on account of the said contract, more than twenty thousand dollars. That said Packwood realized that said Central Counties Land Company had made earnest endeavors to complete its payments under said contracts and was in sympathy with said corporation and its trustees, and recognized the equity which, in

good conscience, arose in its favor by reason of the aforesaid large payments on account of the purchase price of said property, and was willing to sell [54] and dispose of said lands to said Central Counties Land Company, or its trustees, for the balance of the agreed purchase price, with interest, over and above the payments so made on account, or to extend the time of payment under said contract, all of which was well known to said conspirators and to the said defendant Yolo Water and Power Company.

That said defendants and each of them well knew that the said Central Counties Land Company had the said contract with the said Packwood, and that the trustees of said company were desirous of renewing the same. That renewals of the said contract which had been so procured from time to time from the said Packwood had been negotiated for and secured by the said agent and employee of the Central Counties Land Company.

That the said conspirators, in further pursuance of their aforesaid fraudulent scheme and conspiracy, caused the defendant Yolo Water and Power Company to procure, and said corporation did procure, the aforesaid agent and employee of said Central Counties Land Company, while in the employ of the directors and trustees of said corporation, to obtain a new contract upon the said land in the name of the said agent or employee, at a price equal to the balance of the said agreed purchase price with interest on deferred payments added. That at the time of entering into said contract last referred to, said Packwood believed and supposed that the same was

for the use and benefit of said Central Counties Land Company, and for said reason agreed upon a contract price which was more than \$23,000 less than the actual value of said lands. That said defendant Yolo Water and Power Company, acting secretly through said agent, paid to said Packwood \$12,000, on or about October 1st, 1912, and agreed to pay to said Packwood \$14,000 more on July 1st, 1913, and \$14,000 more on January 1st, 1914. That the said Shuman has executed and delivered [55] to the defendant Yolo Water and Power Company an assignment of said contract with said Packwood, and that said Yolo Water and Power Company now claims to be entitled to said lands by reason of said fraudulent transaction. Plaintiff respectfully avers that in equity and good conscience plaintiff is entitled thereto as the successor in interest of said Central Counties Land Company.

That a parcel of property known as the Collier property, situate on said Clear Lake, and having a frontage thereon of one-half mile, or thereabouts, was mortgaged by said Central Counties Land Company to one L. D. Stephens to secure the payment to said Stephens of the sum of seven thousand (\$7,000) dollars; that the said land at the time of the execution of said mortgage was, and ever since has continued to be and still is, of a value in excess of twenty-three thousand (\$23,000.00) dollars, all of which facts were well known to said conspirators and to the defendant Yolo Water and Power Company, and to each and all of them. That the said mortgage to the said Stephens was in form a deed absolute.

That the said defendant Yolo Water and Power Company, at the instance and instigation of the said conspirators, and as their agent, and with full knowledge of the fact that the said instrument was a mortgage, and of the rights and equities therein of the said Central Counties Land Company and its Trustees, at some time subsequent to December 11, 1911, procured from the said Stephens an instrument purporting to be a deed of conveyance conveying to it the said property, and now claim to own the said property. That the defendants herein, and each and all of them claim that the said Collier land is subject to the said so-called trust deed so executed at the defendant Oakland Bank of Savings, and recorded as aforesaid, and that the said deed of trust and the record thereof is a cloud upon the title to the said land to which, as hereinabove [56] set forth, the plaintiff has succeeded.

That said conspirators well knew, from and after June, 1911, that it was an essential part and parcel of the said enterprise to utilize for irrigation both the usual and surplus flow from Clear Lake and Cache Creek, and that actual diversions and appropriations of the necessary water were to be made just as soon as said enterprise was financed and the merger company in a condition to proceed diligently with the work of excavation and construction consequent upon water appropriations in order to comply with the law.

That with such knowledge, and in further pursuance of said fraudulent scheme and conspiracy, the said defendant Yolo Water and Power Company, on

the 28th day of May, 1912, at the direction and instigation of said conspirators, entered upon the said Spring Valley ranch, without the consent of plaintiff's predecessors in interest, and posted a Notice, purporting to be a Notice of Appropriation of Water. That the same was so posted at or near the aforesaid dam site upon the said Spring Valley ranch. That said Spring Valley ranch was, as aforesaid, on said date, private property held in trust by said trustees and former directors of said Central Counties Land Company. That said Notice of Appropriation was and is in the words and figures following, to wit:
[57]

**Notice of Appropriation of Water, Lake County,
California.**

By YOLO WATER AND POWER COMPANY.

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN: (1) That Yolo Water and Power Company, a corporation, organized and existing under and by virtue of the laws of the State of California, and having its principal place of business at Oakland, in said State, hereby claims and appropriates three hundred thousand (300,000) inches of water, measured under a four-inch pressure, flowing in this stream, and that said corporation hereby exercises and asserts the right to the use of the running water flowing in this stream to the extent and in the amount above set forth.

(2) That the purpose for which said corporation claims said water, and the place of the intended use thereof, are as follows, to wit:

This stream is the only outlet of a Lake or body of water situate in Lake County, California, known and described as CLEAR LAKE, and which lake has an area of about eighty (80) square miles, with a water-shed of about five hundred (500) square miles, from which water-shed the water flows into said lake through streams or creeks known as KELSEY, ADOBE, COLE, MIDDLE, SCOTTS, and other creeks, streams, channels and springs tributary to said lake.

The stream upon which this notice is posted, and the waters of which are hereby claimed and appropriated, is known and described as CACHE CREEK.

[58]

The waters that flow into said lake from said creek, streams and springs are discharged through this stream or channel, and flow easterly and southerly, through a deep mountain gorge, for a distance of thirty (30) miles, where said creek then emerges into a narrow valley known as Capay Valley, in Yolo County; said stream thence flows southeasterly through said Capay Valley for a distance of about twenty (20) miles, where it emerges into a plain generally known and described as the floor of the Sacramento Valley, with a uniform slope to the Sacramento River into which River the said waters of Cache Creek are discharged, and thence flow to the sea.

That at the point where said Cache Creek emerges into the Sacramento Valley there begins a very large farming neighborhood comprising about two hundred thousand acres of land and consisting of several

hundred contiguous tracts of land which are owned, possessed and farmed by several hundred distinct proprietors, which lands are usually cultivated in alfalfa, grain, fruits, vegetables and other farm products, in so far as the nature of the soil and the moisture supplied thereto will permit.

Said farming neighborhood lies in the counties of Yolo, Colusa, and Solano, and is located in Township thirteen (13) North, Ranges one, two and three (1, 2, and 3), West, M. D. B. M., in Colusa County, and Township twelve (12) north, Ranges one and two (1 and 2) West, and one (1) East, and Township eleven (11) North, Ranges one and two (1 and 2) West, and Range one (1) East, and Township ten (10) North, Range one (1) West and one and two (1 and 2) East, and Township nine (9) North, Range one (1) West, and Range one (1) East, M. D. B. M., in Yolo County, and Township eight (8) North, Range one (1) West, and Range one (1) East, in Yolo County and Solano County, and seven (7) North, Range one (1) West, and one and two (1 and 2) East, in Solano County. [59]

That during the period from May first to November first in each year, the usual and natural flow of water in said Cache Creek where the same enters said farming neighborhood is sufficient to irrigate not to exceed fifteen thousand (15,000) acres of said lands, and the remaining lands of said farming neighborhood *and* not supplied with water for irrigation purposes, either from said creek or from any other source; that the said remaining lands are of an arable and productive character and subject and suscep-

tible to irrigation, and if the same can be irrigated the productiveness thereof, their value, their fitness for homes and the intensity of their cultivation can and will be greatly enhanced and increased thereby.

That this corporation is now the owner and appropriator of all the water that usually and naturally flows in said creek together with about one hundred and thirty (130) miles of canals, ditches and laterals now used for the irrigation of said fifteen thousand (15,000) acres, and the predecessors in interest of this corporation have, for many years, owned, controlled, managed, and operated said irrigation system, and devoted all of the usual natural flow of said stream during the irrigating season of each year to the beneficial use of irrigating said fifteen thousand (15,000) acres of land, and of supplying thereto water for irrigation so far as the flow of said stream would permit.

That for irrigation, sale, rental and distribution to said farming neighborhood of the flood, freshet and storm waters that now fall upon the water-shed of said Clear Lake, and thence flow into said lake, and out of the same, through said Cache Creek to the Sacramento River, and thence to the sea, which waters are now unused and wasted and being the water that is hereby claimed and appropriated, this corporation proposes and intends immediately to construct a dam across this stream at or near the point where this notice is posted, and thereby impound, [60] retain and store in said Clear Lake said flood and storm waters in sufficient quantities to raise the surface of said lake ten (10) feet above

the low-water mark officially established and fixed by the United States Government; and that the waters of said Lake so impounded will be held and retained in said Lake until required for the irrigation of said farming neighborhood, when said waters will be released, as needed, through gates or other mechanical appliances built in or about said dam, and thence conveyed through the natural channel of said Cache Creek to a point at or near the center of Township ten (10) North, E-ange two (2) West, M. D. B. M., where said water will be diverted from said channel of Cache Creek on either bank thereof by means of a head-gate and two (2) canals, each forty-five (45) feet wide on the bottom, carrying seven (7) feet of water, which canals with such necessary lateral canals and ditches, will be constructed to convey said water to said lands to be irrigated as aforesaid.

That this corporation proposes and intends to construct a canal three hundred (300) feet in width, and of sufficient depth to properly convey the impounded waters of said CLEAR LAKE for a distance of about ten thousand (10,000) feet, more or less, to a point where the natural channel of said Cache Creek will be sufficient to carry the waters hereby claimed and appropriated.

(3) That this notice is posted on the north bank of said Cache Creek on a large cottonwood tree at what is commonly known as the Boat landing about 2000 feet above the Lower Lake Bridge across Cache Creek and about 600 feet west from house now occupied by G. C. Wilkinson.

Dated: May 28, 1912.

[Corporate Seal]

YOLO WATER AND POWER COM-
PANY.

By THOS. PRATHER,
President.

THEODORE A. BELL,
Secretary.

P. N. ASHLEY, Witness. [61]

That thereafter, and on the 29th day of May, 1912, the said Notice of Appropriation was recorded in Volume 4 of Miscellaneous Records, at page 197, Lake County Records. That the filing and recording of the said Notice was an act performed in pursuance of the aforesaid fraudulent scheme and conspiracy and with the procurement, knowledge, connivance, and consent of the said defendants Craig, Brady, Hull, Jr., Phillips, White, Parmalee, and White and Company and their servants and agents.

That if any rights of any kind or character were or have since been acquired by virtue of said Notice, the same belong in equity and good conscience to this plaintiff.

That the above-named J. W. Northup and Ottonar H. Van Norden had, in the course of their negotiations aforesaid, disclosed to the said conspirators, and said conspirators well knew, that it was the plan and intention of the parties to the said merger, upon the completion thereof and as soon as the preliminary expenses of said enterprise were financed, and as a means of strengthening the credit of the enterprise and of raising and securing further moneys

for the development of said enterprise, to solicit and secure contracts and agreements with land owners in the vicinity of the said proposed system of canals and ditches, whereunder the merger company should sell, or agree to sell, to them permanent water rights to be perpetually appurtenant to their lands.

That in June, 1912, said conspirators proceeded to and did adopt and use said plan so disclosed to them, and proceeded to and did secure from and with land owners divers contracts, whereby the defendant Yolo Water and Power Company sold or agreed to sell water rights for lands aggregating 50,000 acres or thereabouts, which said contracts were at the rate of about \$20.00 per acre cash, or \$25.00 per acre payable in ten years, and are of the value of one million (\$1,000,000.00) dollars. [62] That, as a result of the fraudulent advantage so taken, an asset of the value of one million dollars has thus been diverted from the possession and legal ownership of the said allied corporations, and is now held in the name of said defendant Yolo Water and Power Company. That in equity and good conscience, all benefit to be derived from said contracts belong to plaintiff as the successor in interest of the said allied corporations.

That no actual excavation or construction of works for the purpose of diverting any water pursuant to said Notice has as yet been performed or made.

That the defendant Yolo Water and Power Company has never made any application to the State Water Commission of California for a permit to appropriate water or the use of water for the genera-

tion of electricity or electrical power, nor has it ever made application to the said State Water Commission of California for a license to divert and store the surplus waters of either the said Clear Lake or the said Cache Creek.

That the various acts and conduct aforesaid of the said defendants were planned, intended and calculated to wreck and financially ruin and destroy, as aforesaid, the said Central Counties Land Company and its allied corporations, and to wreck and ruin and destroy the said merger. That said plans have to that extent succeeded. That as a result of the acts and conduct of the said defendants, as aforesaid, said Central Counties Land Company and said California Industrial Company and said Central California Power Company were unable to secure money or means with which to continue in active business, or to continue in existence as corporations. That for failure to pay the license taxes of said Central Counties Land Company for the year 1911 due to the State of California the franchise [63] of said corporation and its right to do business as a corporation was forfeited on the 30th day of November, 1911.

That on and after said 30th day of November, 1911, the directors of the said Central Counties Land Company, including the defendant Joseph Craig, became by operation of law trustees of said corporation, for the purpose of winding up its affairs, and said directors ever since have continued to be and still are Trustees of the said corporation, although said defendant Craig has failed, refused and neg-

lected to participate in the winding up of the affairs of said corporation.

That on the 9th day of April, 1913, the plaintiff corporation was organized, as aforesaid, under the laws of the State of Arizona; that the organization of said corporation was brought about at the instance of divers creditors of the said Central Counties Land Company; that the creditors of said last-named corporation were each and all persons who had been defrauded in and by the aforesaid scheme and conspiracy. That thereafter the claims and demands of all the creditors, so far as known to plaintiff, against said Central Counties Land Company, amounting to \$700,000.00 or thereabouts, were duly assigned, transferred and set over unto this plaintiff, or agreed to be so assigned, transferred and set over, and the claims of all the creditors of said California Industrial Company and of the said Central California Power Company were likewise transferred, assigned, and set over to this plaintiff, and thereupon there was issued to various creditors of the said corporations, in consideration thereof and exchange therefor, a total of thirty-five hundred (3500) shares of the capital stock of this plaintiff, of the par value of one hundred (\$100.00) dollars each. [64]

That thereafter the Trustees of the said Central Counties Land Company, in partial satisfaction of the said creditors' claims, sold, assigned, transferred and set over unto this plaintiff all of the assets and property, choses in action, rights and equities of every kind and character arising out of the transactions herein referred to, and belonging to the said

Central Counties Land Company, or vested in them as Trustees, and thereupon said creditors' claims so assigned were, by agreement between plaintiff and said Trustees, satisfied in an amount in excess of the value of the assets so received by this plaintiff from said Trustees, and due and proper provision was made for paying to any creditors of said Central Counties Land Company who might thereafter be discovered, or who had not so assigned his claim to plaintiff, a just and true *pro rata* of his or their claim or claims, in the ratio of the total amount of such claims to the total value of all of the assets of said Central Counties Land Company, and said transaction was duly ratified and approved by former stockholders of said Central Counties Land Company owning and holding more than two-thirds of the capital stock of said defunct corporation; and thereafter the Trustees of the said California Industrial Company and the Trustees of the said Central California Power Company (the rights of each of said last-named corporations to do business having theretofore been forfeited for nonpayment of the State license tax), in consideration of the cancellation of all of the indebtedness of the said respective corporations, have sold, assigned, transferred, conveyed, set over and delivered to plaintiff all of the assets, properties, claims, and equities of every kind and character belonging to the said two last-named defunct corporations, or belonging to or vested in them as Trustees [65] thereof. That the assets so received by plaintiff were of less value than the outstanding creditors' claims against said corporations,

and that plaintiff's stockholders include substantially all of the creditors of said defunct corporation, who, as aforesaid, were defrauded by the said scheme and conspiracy.

The plaintiff is now the owner and holder of all of the aforesaid properties, rights, choses in action, equities and assets formerly owned by said defunct corporations and their Trustees.

That plaintiff is now the owner and holder of all of the choses in action, rights and equities of the aforesaid Central Counties Land Company, California Industrial Company, and Central California Power Company, and of substantially all, if not all, of the creditors' claims against said defunct corporations, and of the claims of the Trustees of said defunct corporations, including all choses in action, rights and equities accrued or accruing to them, or to any or either of them, by reason of the aforesaid fraudulent acts and conduct of the said parties to the said fraudulent scheme and conspiracy, and of the defendant Yolo Water and Power Company, the agent and instrumentality of the said conspirators as aforesaid.

That plaintiff has a capital stock of One Million (\$1,000,000.00) Dollars, and that three hundred and fifty thousand (\$350,000.00) dollars of said capital stock is fully paid up and issued as hereinabove set forth.

That divers secured creditors of said defunct Central Counties Land Company have, by agreement with certain stockholders, and for adequate and valuable consideration, assigned their mortgages to

plaintiff, and the lands so acquired by [66] plaintiff have been freed from large encumbrances and liens, and plaintiff now has assets of a value in excess of its issued capital stock, and is in a condition to proceed with the aforesaid enterprise.

That plaintiff now owns or controls, either in fee simple or for reservoir and overflowage purposes, more than one-half of the frontage of said Clear Lake, including said Spring Valley ranch and dam site.

That plaintiff owns and holds the water appropriations to the amount of 500 second-feet or upwards, on said lake, made under the statutes of the State of California as the same existed prior to the year 1911, which were the first in time and are first in right; that within sixty (60) days after the Notices of Location under which plaintiff claims said water rights were posted, plaintiff's predecessors commenced the survey and trail building necessarily incident to the excavation and construction of the works in which the said claimant and plaintiff intended to divert said water, and plaintiff's said predecessors and plaintiff, since its acquisition of said claims, have and has prosecuted the work diligently and uninterruptedly, and have built more than eleven miles of trail and have expended in labor thereon over \$5,000.00, and have expended upon surveys in and about the work necessarily incident to the excavation and construction of the works in which plaintiff intends to divert said waters, upwards of twenty thousand dollars, and have expended in acquiring lands for the reservoir, which is a part of the works essen-

tial to the diversion of said water, money or its equivalent in the amount of more than one hundred thousand (\$100,000.00) dollars.

That said appropriations are good and valid and are now in full force and effect, and plaintiff is informed and verily [67] believes, and therefore alleges, that it has the right thereunder to erect a dam upon its lands at the mouth of said Clear Lake and to divert the waters of said Clear Lake and Cache Creek for the purpose of generating electricity and electrical power, and for purposes of irrigation.

That plaintiff owns and holds more than seven thousand (7,000) acres of land bordering upon or now overflowed by said Clear Lake.

That since its incorporation as aforesaid, and in order the better to carry out its purposes and to utilize the aforesaid water rights, plaintiff has duly made application to the State Water Commission of California for a permit to appropriate, for the generation of electricity and electrical power, all of the unappropriated waters of the said Cache Creek, being all the waters thereof now or heretofore actually used by said defendant Yolo County Consolidated Water Company in its canals as aforesaid, and has also duly filed with said State Water Commission of California its application for a permit to appropriate all of the aforesaid waters so actually used in the said canals by the said defendant Yolo County Consolidated Water Company for the purpose of generating electricity and electrical power; and plaintiff also has made application to said State

Water Commission of California for a license and permit to erect a dam and to divert and store all of the natural flow and storm waters of the said Clear Lake, including all the waters known as the Siegler Creek, and all of the waters flowing out of said lake into and through the said Cache Creek at all seasons.

That there are no other applications on file with the State Water Commission of California for the appropriation of the said water or any part or portion thereof for any or [68] either of the purposes aforesaid, and that plaintiff's application is the first and only application therefor, and has priority over any other applications that may be made.

That it is not necessary to the aforesaid enterprise for plaintiff to acquire or own in fee simple the canal or ditch system and laterals now or formerly owned or controlled by defendant Yolo County Consolidated Water Company, nor is it necessary that plaintiff should have, nor does plaintiff herein seek a return, of the stock of the Yolo County Consolidated Water Company; but plaintiff respectfully represents and alleges that it is just and equitable that there be had in this action an equitable condemnation whereunder plaintiff shall be permitted to have the use of said distributing system, consisting of canals or ditches and laterals, of said Yolo County Consolidated Water Company, for the purpose of conveying the waters to be impounded in Clear Lake by it, to the persons who, and upon the lands which, may have need of the same for irrigation.

And in that behalf and connection plaintiff avers that it has both the legal and equitable prior right

to divert and store in Clear Lake, for the purpose of generating electricity and electrical power, the water flowing out of said Clear Lake through Cache Creek at all seasons, including all surplus, storm or flood water, and also all of the natural flow thereof not hitherto appropriated, and has also the prior and sole right to secure a permit for, and to erect a dam for, said purpose at or near the outlet to the said lake.

That the surplus waters, and the storm, flood or waste waters, and the hitherto unused natural flow of Cache Creek so to be stored in said lake by reason of the erection of said dam, and to be diverted therefrom for the purpose of generating electricity and electrical power, will, when so diverted, belong to plaintiff, and will be available for purposes of [69] irrigation.

That there are no rights to divert or appropriate the water to be stored in said lake by means of said dam so to be erected which are superior or equal to plaintiff's right, and that neither of the defendants has any right whatsoever to dam said lake, or to store the surplus waters of Cache Creek therein, or to store therein any flood and storm waters whatsoever.

That by reason of the matters and things herein alleged, plaintiff also owns and holds the equitable title to the benefits, if any, of the appropriation and location for irrigation purposes which defendant Yolo Water and Power Company caused to be posted on said Spring Valley ranch and recorded on May 29th, 1912, as aforesaid.

Plaintiff further alleges that by reason of the matters and things herein set forth, plaintiff is in equity

and good conscience entitled to the beneficial enjoyment of all of the aforesaid contracts so made as aforesaid with said land owners for the said sale of water to the owners of the 50,000 acres of land accessible to the said canal system of defendant Yolo County Consolidated Water Company.

That defendants Yolo County Consolidated Water Company and Yolo Water and Power Company are entitled to the usual and normal flow of Cache Creek at the times and seasons, and to the extent, that said waters were utilized prior to the incorporation of said defendant Yolo Water and Power Company, but to no other or greater extent.

That defendant Yolo Water and Power Company claims to own all of the stock of the Yolo County Consolidated Water Company; that said Yolo County Consolidated Water Company is the owner of those certain canals or ditches, together with their laterals, situate, lying and being in the County of Yolo, State [70] of California, and more particularly described as follows:

**[Description of Certain Property Owned by Yolo
County Consolidated Water Co.]**

1.

The canal or ditch known as the Moore ditch which takes water from Cache Creek at a point three and one-half ($3\frac{1}{2}$) miles or thereabouts east of the town of Madison; that at said point said defendant owns a permanent dam which was constructed at a cost of \$10,000 or thereabouts; from said dam there is a ditch 4 miles long and 20 feet wide at the bottom, with a grade of 3 feet per mile, capable of carrying

150 second-feet or thereabouts; also 12 miles of ditch connecting with the ditch last described, 12 feet wide at the bottom, together with 150 miles or thereabouts of lateral distributing ditches.

2.

That certain ditch or canal known as the Capay Ditch which takes water from Cache Creek about 12 miles above the said Moore Ditch; that upon said site, the said defendant Yolo County Consolidated Water Company or the defendant Yolo Water and Power Company—this plaintiff is not advised which—has erected a permanent dam during the year 1912; plaintiff is not advised as to the cost of the said dam. From said dam said ditch extends 37 miles, where it enters a natural slough some 20 miles in length, and connected with said ditch and slough there are upwards of 50 miles of laterals.

3.

That certain ditch or canal known as the Adams Ditch, which starts $1\frac{3}{4}$ miles below the said Capay Ditch on the opposite side of the creek and has 16 miles of ditch or canal, 6 miles of natural slough and upwards of 10 miles of laterals; that there is no permanent dam at the intake of the said Adams Ditch.

That the purpose for which said ditches were constructed was to divert the natural flow of said Cache Creek during the [71] irrigating season, which begins about the first of May and ends ordinarily about the first of October.

That the said canals or ditches have a combined intake capacity of 500 second-feet or thereabouts. That said defendant Yolo County Consolidated

Water Company and the said defendant Yolo Water and Power Company have not, nor has either of them, ever used or utilized said ditches to their full capacity.

That the natural flow of said Cache Creek is comparatively small during the summer months and does not, at the beginning of the summer months, exceed ——— second-feet; that the same rapidly diminishes until toward the end of the said summer season it usually ceases altogether and during a portion of the said irrigating season there is at times no natural flow whatever in said stream or into said ditches.

That said two defendants above last named have not, nor has either of them, any right to store or divert the surplus of storm waters from said creek, or to store or divert the same for any purpose.

That said canals and ditches, and their laterals, extend into portions of the said Yolo County which are in need of water for irrigating purposes, and they afford a convenient and suitable method or way of reaching upwards of 100,000 acres of land which have never yet been irrigated but which are in need of water for irrigation.

That the water owned and controlled by defendants, and which they have the right to divert, is insufficient to properly irrigate the lands now immediately under and in reach of said canals or ditches and their laterals.

That lying below the level of said ditches, and immediately irrigable therefrom, are more than 50,000 acres of land which would be, immediately benefited if it could be supplied with adequate water for irrigation purposes. [72]

That it is the purpose and intent of plaintiff to reach said lands with suitable canals, ditches and laterals and to conduct water through the same and to sell and dispose of said water to the land owners or occupants and to furnish enough additional water to supply any deficiency between the amount or quantity of water now furnished by defendants, and a uniform, regular and sufficient quantity for the adequate irrigation thereof; and to sell also to the land owners and occupiers of such lands perpetual and other water rights which shall become appurtenant to estates in such lands.

That the said purposes of plaintiff aforesaid can be accomplished by and through a common use by plaintiff and the said defendants of the said canals or ditches and laterals.

That the use in common with said defendants of said ditches, canals and laterals of which plaintiff hereby seeks an equitable condemnation, will in no way or manner diminish or destroy the defendants' use thereof, and such common use may be had without difficulty or appreciable inconvenience to defendants.

That plaintiff is ready, able and willing to pay its proper proportion of the upkeep and a proper rental or other return to the said defendants for the said common use thereof, and to pay to the defendants for the taking of an easement, servitude, or right to have and enjoy such use, such compensation as this Honorable Court shall find to be the value thereof and to be just and equitable.

That the taking of such servitude, easement, or

use in, over and through said canals, ditches, and laterals is necessary for the following reasons, in addition to those hereinabove appearing; that it is to the public benefit, and to the benefit of the owners and occupiers of the lands which, as aforesaid, are in need of and will be benefited by irrigation, that as little land as possible be taken for and occupied by the canals, [73] ditches and laterals, that the system so owned or controlled by defendants occupies a total actual area of many hundreds of acres of land.

That if a use in common as herein set forth is not permitted, it will be necessary for plaintiffs to duplicate said system, and to that end to acquire by purchase or condemnation, or both, sufficient lands or rights of way for said purpose.

That the lands so acquired would, by reason of the use to which the same would so be put by plaintiff, be withdrawn from agriculture and rendered unproductive of crops, which would be to the detriment of the public.

That it would be necessary, moreover, to cross and recross defendants' canals or ditches and laterals many times with the canals or ditches and laterals of the plaintiff, and that in order to effect such crossings and recrossings costly construction would be required.

That the charge which plaintiff will be permitted by the State authorities to make to *consums* for said water will depend upon cost of construction, and the burden of any unnecessary outlay or cost of duplication will fall upon and be detrimental to the owners or occupiers of the land receiving such irrigation.

That plaintiff is informed and believes that the defendants White, Parmalee, Hull, Jr., Pike, Phillips, Brady and White and Company are large stockholders and bondholders in the said defendant Yolo Water and Power Company, owning and holding large blocks of preferred and common stock, either in their own names or in the names of other persons, on the books of said corporation, all of which said stock they have received as their commissions for and on account of their participation in the transactions aforesaid. That the transfer books of said defendant Yolo Water and Power Company are [74] within the jurisdiction of, and subject to, the process of this Honorable Court.

That over \$9,200,000.00 par value of the said bonds of defendant Yolo Water and Power Company are still unissued and are in the control of the defendant Oakland Bank of Savings. That of the \$800,000.00 par value, or thereabouts, which have been issued, a large number are in the possession and control of the said defendants Craig, Parmalee, White, Brady, Hull, Jr., Phillips and White and Company, the said last-named defendants having received the same as and for their commission and profit from the aforesaid scheme and conspiracy.

That it is necessary and proper that an injunction *pendente lite* be issued to restrain and enjoin the defendants from disposing of or issuing or transferring the said stocks and bonds.

That it is necessary and proper that a Receiver be appointed to take charge of the said stock to preserve the property involved in this Bill from waste or in-

jury pending the litigation, and in order that the equitable relief hereinafter prayed for, or such equitable relief as may be proper in the premises, may be adequately adjudged and decreed and proper and adequate relief be awarded and enforced.

That plaintiff is now the lawful owner and holder of the aforesaid Spring Valley ranch and the said Collier Ranch. That the said deed of trust so executed as aforesaid to the defendant Oakland Bank of Savings to secure the payment of the aforesaid bond issue, which said deed of trust is recorded in Lake County, California, as aforesaid, and includes said Spring Valley ranch by specific description, and which, by its general language, covers and includes all property which said Yolo Water and Power Company has acquired or shall acquire, and which, therefore, covers the said Collier Ranch, and is a cloud [75] upon the title of plaintiff to the said properties, and tends to depreciate the value thereof.

That the plaintiff has heretofore filed Bills in this Honorable Court to have said instruments which are in the form of deeds absolute as aforesaid, adjudged to be mortgages in fact.

That plaintiff is informed and believes, and upon such information and belief avers, that the defendants Yolo Water and Power Company, Capay Ditch Company, and Yolo County Consolidated Water Company have acquired certain lands, and overflowage rights in lands, bordering upon Clear Lake, and have also acquired certain riparian and other rights in and to lands bordering upon Cache Creek all of which said lands and rights are essential to plain-

tiff's aforesaid enterprise, and all of which said lands plaintiff is informed and believes and upon such information and belief avers, the said defendants, by reason of the matters and things herein set forth, are chargeable with as Trustees for this plaintiff.

That plaintiff is ready, able and willing to do equity and hereby offers to submit to such equitable terms or to such orders and decrees in the premises as this Honorable Court shall deem just and equitable, and shall impose as a condition to the granting of the relief hereinafter prayed for and is ready and willing to do and hereby offers to do equity in all things in the manner and to the extent that this Honorable Court shall require.

That plaintiff has no speedy, plain and adequate remedy in the ordinary course of law.

WHEREFORE, plaintiff prays the decree of this Honorable Court, sitting in equity:

1. That all of the defendants to this Bill who may [76] have received any moneys, stock or bonds, as a commission or promotion fee in and about the aforesaid fraudulent transaction be required to account to this plaintiff therefor, and to pay over such profits, commission, or promotion fee in whatever form the same may now be to this plaintiff.

2. That an account thereof be had and that, pending such accounting, the defendants herein, and each and all of them be restrained and perpetually enjoined from issuing or transferring any stock or bonds so received as profits or commission or promotion fee, and that the defendant Yolo Water and

Power Company be restrained and perpetually enjoined from permitting a transfer of said stock upon its books, or from registering any of the said bonds.

3. That a Receiver be appointed to take charge of such moneys, stocks, bonds, and certificates of shares of stock so paid, received or intended as a profit or commission or promotion fee as are within the jurisdiction of the Court pending the final disposition thereof by this Honorable Court.

4. That all of said unissued bonds in the possession or control of defendants, or of any or either of them, be surrendered up and canceled.

5. That it be ordered, adjudged, and decreed that the aforesaid bond issue is invalid, null and void as to this plaintiff and all persons claiming under this plaintiff.

6. That suitable provision be made for the just and proper protection of any and all persons who may have purchased any of said bonds in good faith, for a valuable consideration and without notice, and that defendants other than the said defendant trustee for the bondholders, be compelled to make restitution to such persons as may have so acquired the same in good faith, for a valuable consideration and without notice. [77]

7. That the lien of the said Deed of Trust, if adjudged to be a valid lien at all, be confined in and by the decree of this Honorable Court to the properties situate in Yolo County, California, and owned by the defendants Yolo County Consolidated Water Company and Yolo Water and Power Company.

8. That the said deed of trust so recorded, as

aforesaid, in Lake County, California, and the record thereof, be adjudged to be a cloud upon plaintiff's title to the aforesaid Spring Valley ranch and the aforesaid Collier ranch, and removed and canceled as such cloud.

9. That it be ordered, adjudged, and decreed that any right of eminent domain claimed by the defendants, or any or either of them, as to the lands situate in the Counties of Lake, Colusa and Yolo in the State of California, bordering on said Clear Lake or Cache Creek, and embracing said Cache Creek, and essential to the aforesaid enterprise, and other lands in said Counties riparian to said Cache Creek, is subordinate and secondary to the prior right of the plaintiff to condemn the same.

10. That it be ordered, adjudged, and decreed that the lands, if any, which have been heretofore condemned or otherwise acquired by the said defendant Yolo Water and Power Company, either in Cache Creek or on the borders of said Clear Lake, including all the lands embraced in the aforesaid condemnation suits so filed by said Yolo Water and Power Company as aforesaid, and all other lands essential to the said enterprise, are now held by the defendant Yolo Water and Power Company in trust for this plaintiff, and that any right or interest which the said defendant Yolo Water and Power Company claims therein, or in the aforesaid Packwood lands, be adjudged and decreed to be held by it in trust for this plaintiff, and that an accounting be had as to the proper cost [78] thereof, and that this plaintiff be required, as a condition to the recovery of the said lands or interests,

to do equity within such reasonable time as this Honorable Court may deem just and equitable.

11. That the defendant Yolo Water and Power Company be restrained and perpetually enjoined from further proceeding with or taking action in the aforesaid condemnation suits so brought by it as aforesaid, other than to dismiss the said actions wholly, or as to some or any of the defendants therein named, and that said defendant Yolo Water and Power Company be further restrained and perpetually enjoined from disputing the prior right of plaintiff to condemn the said lands.

12. That it be ordered, adjudged, and decreed that the aforesaid Notice of Water Location, so recorded as aforesaid in Volume 4 of Miscellaneous Records, at page 197, of Lake County Records, was made for the use and benefit of this plaintiff and its predecessors in interest, and that the rights acquired thereunder, if any, are now vested in this plaintiff and that the defendant Yolo Water and Power Company or, if said defendant shall refuse, then a Commissioner to be appointed by this Honorable Court, be ordered, required or directed to convey the rights so acquired under the said Notice to this plaintiff, upon plaintiff's doing equity in regard thereto within such reasonable time as this Honorable Court shall fix.

13. That the defendant Yolo Water and Power Company be restrained and perpetually enjoined from making any greater, further, different or additional use of the waters naturally flowing in Cache Creek than the use which was made of the aforesaid

waters by the defendant Yolo County Consolidated Water Company, during the period or seasons of irrigation prior to the date of the incorporation of the defendant Yolo Water and Power Company; that the quantity and period of such use, and the extent of use during the Spring and Summer months and during the [79] irrigation months, and the extent of the use to which defendants or any or either of them may be entitled therein, be ascertained and fixed in a decree to be rendered by this Honorable Court; that the defendant Yolo County Consolidated Water Company and the defendant Yolo Water and Power Company be further restrained and perpetually enjoined from any other, different, additional or more extensive use of the said waters than the use so ascertained and fixed.

14. That the defendant Yolo Water and Power Company be further restrained and perpetually enjoined from making any use whatsoever, other than for the purpose of irrigation, of any of the waters naturally flowing through Cache Creek or out of Clear Lake, or any use whatsoever of the flood or storm waters of the said Clear Lake, including said Siegler Creek, and of the said Cache Creek.

15. That the contracts to irrigate the said 50,000 acres or thereabouts which the defendant Yolo Water and Power Company has acquired as aforesaid in fraud of the rights of Plaintiff be adjudged and decreed to be held by said defendant Yolo Water and Power Company in trust for plaintiff, and that said defendant be compelled to transfer, assign, set over and convey said contracts, or any rights acquired

thereunder, to this plaintiff upon plaintiff's doing equity with respect thereto in the manner and to the extent that this Honorable Court shall adjudge to be fair, proper, and equitable, within such reasonable time as the Court shall direct, and that in the event of the failure or refusal of the said defendant to make such transfer, assignment, setting over or conveyance, that then a Commissioner be appointed by this Honorable Court with authority, and charged with the duty, to make such assignment, for and in the name of said defendant Yolo Water and Power Company.

16. That an equitable condemnation be had and made in [80] favor of plaintiff and against defendants of the use of the aforesaid distributing system of said Yolo County Consolidated Water Company, which said distributing system consists of canals or ditches and laterals as aforesaid, such use to extend to the full capacity of the canals or ditches and laterals, over and above the use thereof for the natural flow, as aforesaid, during the irrigation months, and without any right upon the part of plaintiff to interfere with the lawful use thereof by defendants Yolo Water and Power Company and Yolo County Consolidated Water Company, to the extent of the actual use thereof for irrigating purposes which had been actually enjoined by the said defendant Yolo County Consolidated Water Company prior to the 11th day of December, 1911.

17. That defendants be compelled to set forth the rights which they now claim to have in and to the lands, and in and to the overflowage rights in lands,

bordering upon Clear Lake and Cache Creek; that inquiry be made into the said claim, and, if found valid, then that further inquiry be made as to whether or not the same are held in trust for this plaintiff, and, if so, that conveyances thereof to this plaintiff be decreed and directed, upon such terms as may be just and equitable, and if such rights are found to exist in defendants, or any or either of them in absolute ownership, then that the same be condemned herein to the use and benefit of this plaintiff to the full extent that may be necessary for the aforesaid enterprise.

18. For costs of suit, and for such other, further, different, or additional relief as is meet in the premises, and conformable to equity.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Plaintiff.

HARDING & MONROE,

Of Counsel. [81]

State of California,

City and County of San Francisco,—ss.

H. S. Elliot, being first duly sworn, deposes and says:

That he is an officer, to wit, the President of Power and Irrigation Company of Clear Lake, a corporation, plaintiff in the above-entitled action, and that he makes this affidavit in its behalf.

That he has read the above and foregoing Bill in Equity and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his informa-

94 *Power and Irrigation Company of Clear Lake*
tion or belief, and as to those matters that he believes
it to be true.

H. S. ELLIOT.

Subscribed and sworn to before me this 13th day of
May, 1913.

[Notarial Seal] ALICE SPENCER,
Notary Public in and for the City and County of San
Francisco, State of California.

(Here follows exhibit "A," which is omitted as per
praecepe of plaintiff.)

[Endorsed]: Filed May 14, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [82]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 19—EQ.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

JOSEPH CRAIG et als.,

Defendants.

Order Dismissing the Above-entitled Action.

CHARLES S. WHEELER and JOHN F.
BOWIE, Attorneys for Plaintiff.

DENSON, COOLEY & DENSON, E. A.
SHAW, BERT SCHLESSINGER, THE-
ODORE A. BELL and MASTICK &
PARTRIDGE, Attorneys for Defendants.

This action being based upon a chose in action assigned to plaintiff upon which the assignor could not sue in this Court, and that fact having been called to the attention of the Court, it is ordered that the said action be, and the same is hereby dismissed.

April 30th, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Entered April 30th, 1914. Walter B. Maling, Clerk. [83]

*In the United States District Court for the Northern
District of California.*

No. 19—IN EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, an Arizona Corporation,
Plaintiff,

vs.

JOSEPH CRAIG, et al.,

Defendants.

Decree.

THIS matter came on to be heard on the fourth day of April, 1914, upon a motion made by the defendants to dismiss plaintiff's bill of complaint upon the ground that the above-entitled court is without jurisdiction to hear and determine the said cause; thereupon the said motion was submitted to the Court for its decision, and all and singular, the premises having been duly considered by the Court and it appearing that the said court is without jurisdiction to hear and determine the said cause.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the said bill of complaint and the said cause be and the same are hereby dismissed, and that the said defendants recover their costs herein, taxed at the sum of ——— dollars.

Dated, May 5th, 1914.

M. T. DOOLING,
Judge of Said Court.

[Endorsed]: Filed and Entered May 5th, 1914.
Walter B. Maling, Clerk. [84]

*In the District Court of the United States for the
Northern District of California, Second Division.*

Number 19—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C.
L. PARMALEE, GEORGE H. HULL, Jr.,
ROY M. PIKE, OAKLAND BANK OF
SAVINGS, a Corporation, YOLO COUNTY
CONSOLIDATED WATER COMPANY, a
Corporation, CAPAY DITCH COMPANY, a
Corporation, YOLO WATER AND POWER
COMPANY, a Corporation, and WHITE
AND COMPANY, a Common Name Under

Which More Than Two Persons are Associated in Business and Transact Such Business,

Defendants.

Petition for Order Allowing Appeal and Order Allowing Appeal.

To the Honorable Court Above Entitled:

The above-named Plaintiff, POWER AND IRRIGATION COMPANY OF CLEAR LAKE, a corporation, considering itself aggrieved by the decree made and entered in the above-entitled court on the 5th day of May, 1914, in the above-entitled cause, hereby appeals therefrom to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons and upon the grounds specified in its Assignment of Errors filed herewith, and prays that this appeal may be allowed; and that a transcript of the record, proceedings and papers upon which said decree was made and entered as aforesaid, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, sitting at San Francisco, California.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its [85] said appeal be made.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Plaintiff.

Order Allowing Appeal.

The foregoing Petition for Appeal is hereby granted, and the appeal is allowed, upon the petitioner

98 *Power and Irrigation Company of Clear Lake*
filing a bond in the sum of Three Hundred (\$300)
Dollars, to be conditioned as required by law.

Dated, October 27, A. D. 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 27, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [86]

*In the District Court of the United States, for the
Northern District of California, Second Divi-
sion.*

No. 19—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C.
L. PARMALEE, GEORGE H. HULL, Jr.,
ROY M. PIKE, OAKLAND BANK OF
SAVINGS, a Corporation, YOLO COUNTY
CONSOLIDATED WATER COMPANY, a
Corporation, CAPAY DITCH COMPANY, a
Corporation, YOLO WATER AND POWER
COMPANY, a Corporation, and WHITE
AND COMPANY, a Concern Name Under
Which More Than Two Persons are Asso-
ciated in Business and Transact Such Busi-
ness,

Defendants.

Assignment of Errors on Appeal.

Now comes the plaintiff in the above-entitled action by its attorneys, Charles S. Wheeler and John F. Bowie, and avers that the decree entered in the above-entitled cause on the 5th day of May, 1914, is erroneous and unjust to the plaintiff, and files with its petitioner for an appeal from the said decree, the following Assignment of Errors, and specifies that the said decree is erroneous in each and every of the following particulars, viz.:

1. The said District Court of the United States, for the Northern District of California, was not without jurisdiction to hear and determine the said cause, and the order, judgment, and decree of said court granting defendants' motion and dismissing the said bill of complaint and the said cause for want of jurisdiction is therefore erroneous.

2. The said Court erred in holding that plaintiff's cause of action is based upon a chose in action assigned to plaintiff upon which the assignor could not sue in this court, forasmuch as plaintiff's cause of action is not based upon a [87] chose in action within the meaning of that phrase as used in Section 24 of the Judicial Code, but is an action to obtain various forms of equitable relief originating out of plaintiff's title to real property, including the removal of clouds from title and the adjudication that a deed of trust purporting to create a lien upon plaintiff's real property to secure a bonded indebtedness is void and that the bonds so secured be surrendered up and canceled.

3. The said Court erred in holding that plaintiff's cause of action is based upon a chose in action within the meaning of the law conferring jurisdiction upon the said Court, forasmuch as plaintiff's bill sets forth a cause of action to remove a cloud upon the title to plaintiff's real property; and the said Court having jurisdiction at least as to the said cause of action, it was error to dismiss the said bill for want of jurisdiction as to any other matters set forth in the bill.

4. The Court erred in holding that this action is based upon a chose in action assigned to plaintiff upon which the assignor could not sue in the said court, forasmuch as the said action is based upon transfers of real property and is an action to quiet title to real property and to remove a cloud therefrom and to obtain preventive and other equitable relief with regard thereto, and that as to said matters the Court has jurisdiction and that such jurisdiction draws to the Court the various equities of plaintiff set forth in the bill, forasmuch as equity will prevent a multiplicity of suits, and the Court having obtained jurisdiction as to one or more of the aforesaid matters will take unto itself jurisdiction over all of them.

5. The Court erred in holding that plaintiff's cause of action is based upon a chose in action assigned to plaintiff upon which the assignor could not sue in this court, and that the Court had no jurisdiction, forasmuch as plaintiff's cause [88] of action embraces a cause of action to remove a cloud from title to real property and the said cause of action saves the right to Federal jurisdiction and brings within equitable cognizance, as branches of the single

controversy, the various other matters set forth in the complaint, thereby avoiding a multiplicity of suits; and the said statute restricting the right of suits by assignees is not applicable when jurisdiction attaches as to at least one cause of action well stated.

WHEREFORE, plaintiff prays that the said decree be corrected or reversed, and the District Court directed to deny said Motion to Dismiss, or that such other relief be awarded as the nature of the case demands.

CHARLES S. WHEELER, and
JOHN F. BOWIE,

Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 27, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [89]

*In the District Court of the United States for the
Northern District of California, Second Division.*

Number 19—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C.
L. PARMALEE, GEORGE H. HULL, Jr.,
ROY M. PIKE, OAKLAND BANK OF
SAVINGS, a Corporation, YOLO COUNTY
CONSOLIDATED WATER COMPANY, a
Corporation, CAPAY DITCH COMPANY, a

102 *Power and Irrigation Company of Clear Lake*

Corporation, YOLO WATER AND POWER COMPANY, a Corporation, and WHITE AND COMPANY, a Common Name Under Which More Than Two Persons are Associated in Business and Transact Such Business,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Power and Irrigation Company of Clear Lake, as principals, and Pacific Coast Casualty Co., as surety, of the City and County of San Francisco, State of California, are held firmly bound unto Joseph Craig, William A. Brady, E. L. Phillips, Archibald S. White, C. L. Parmalee, George H. Hull, Jr., Roy M. Pike, Oakland Bank of Savings (a corporation), Yolo County Consolidated Water Company (a corporation), Capay Ditch Company (a corporation), Yolo Water and Power Company (a corporation), and White and Company (a common name under which more than two persons are associated in business and transact such business), in the sum of Three Hundred and no/100 (\$300) Dollars, lawful money of the United States, to be paid to them and their respective executors, administrators, and successors and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our successors and [90] assigns, by these presents.

Sealed with our seals and dated this 28 day of October, A. D. 1914.

WHEREAS, the above-named Power and Irriga-

tion Company of Clear Lake has obtained an appeal to the Circuit Court of Appeals of the United States to correct or reverse the decree of the District Court for the Ninth District of California, in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Power and Irrigation Company of Clear Lake shall prosecute its said appeal to effect and answer all costs if it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

POWER AND IRRIGATION COMPANY
OF CLEAR LAKE,

[Seal]

By H. S. ELLIOTT,

President.

By R. H. BORLAND,

Secretary.

PACIFIC COAST CASUALTY CO.,

[Seal]

By R. W. STEWART,

Attorney in Fact.

Approved this 28 day of October, A. D. 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Oct. 28, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [91]

*In the District Court of the United States, for the
Northern District of California.*

No. 19—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C.
L. PARMALEE, GEORGE H. HULL, Jr.,
ROY M. PIKE, OAKLAND BANK OF
SAVINGS, a Corporation, YOLO COUNTY
CONSOLIDATED WATER COMPANY, a
Corporation, CAPAY DITCH COMPANY, a
Corporation, YOLO WATER AND POWER
COMPANY, a Corporation, and WHITE
AND COMPANY, a Common Name Under
Which More Than Two Persons are Asso-
ciated in Business and Transact Such Busi-
ness,

Defendants.

Praeceptum for Transcript on Appeal.

To the Clerk of Said Court:

Sir: Please make up, print, and issue in the above-entitled cause a certified transcript of the record, upon an appeal allowed in this cause, to the Circuit Court of Appeals of the United States for the Ninth Circuit, sitting at San Francisco, California, the said transcript to include the following:

Bill in Equity, omitting Exhibit "A";
Order for Decree, dated April 30, 1914;
Decree of Dismissal, Dated May 5, 1914;
Petition for Order Allowing Appeal, and Order
Allowing same;
Assignment of Errors;
Bond on Appeal;
Citation on Appeal;
Praecipe for Transcript on Appeal. [92]

You will please transmit to the Circuit Court of Appeals, with the record to be prepared as above, the original Citation on Appeal.

CHARLES S. WHEELER, and
JOHN F. BOWIE,

Solicitors for Appellant.

Service and receipt of a copy of the within Praecipe this 28th day of Oct. 1914, is hereby admitted.

DENSON, COOLEY & DENSON,
BERT SCHLESINGER,
A. E. SHAW,
MASTICK & PARTRIDGE,

Attorneys for Def.

[Endorsed]: Filed Oct. 28, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [93]

[**Certificate of Clerk U. S. District Court to
Transcript of Record.**]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 19—IN EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

JOSEPH CRAIG et al.,

Defendants.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing ninety-three (93) pages, numbered from 1 to 93, inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$56.40; that said amount was paid by Charles S. Wheeler and John F. Bowie, Esqs., attorneys for plaintiff; and that the original Citation issued in said cause is hereto annexed.

In testimony whereof, I have hereunto set my

hand and affixed the seal of said District Court this 25th day of November, A. D. 1914.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [94]

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Joseph Craig, William A. Brady, E. L. Phillips, Archibald S. White, C. L. Parmalee, George H. Hull, Jr., Roy M. Pike, Oakland Bank of Savings, a Corporation, Yolo County Consolidated Water Company, a Corporation, Capay Ditch Company, a Corporation, Yolo Water and Power Company, a Corporation, and White and Company, a Common Name Under Which More Than Two Persons are Associated in Business and Transact Such Business, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 27 day of November, 1914, being within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the District Court of the United States for the Northern District of California, in the suit numbered "19—Equity" in the records of said court, wherein Power and Irrigation Company of Clear Lake, a corporation, is plaintiff and appellant, and you and each of

you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said plaintiff and appellant, as in said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 28 day of October, 1914.

M. T. DOOLING. [95]

Service and receipt of a copy of the within Citation this 28th day of Oct., 1914, is hereby admitted.

DENSON, COOLEY & DENSON,
BERT SCHLESINGER,
A. S. SHAW,
MASTICK & PARTRIDGE,

Attorneys for Defs.

[Endorsed]: No. 19—Equity. In the United States District Court for the Northern District of California. Power and Irrigation Company of Clear Lake, a Corporation, Plaintiff, vs. Joseph Craig et al., Defendants. Citation on Appeal—Original. Filed Oct. 28, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2521. United States Circuit Court of Appeals for the Ninth Circuit. Power and Irrigation Company of Clear Lake, a Corporation, Appellant, vs. Joseph Craig, William A. Brady, E. L. Phillips, Archibald S. White, C. L. Parmalee, George H. Hull, Jr., Roy M. Pike, Oakland Bank of

Savings, a Corporation, Yolo County Consolidated Water Company, a Corporation, Capay Ditch Company, a Corporation, Yolo Water and Power Company, a Corporation, and White and Company, a Common Name Under Which More Than Two Persons are Associated in Business and Transact Such Business, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed November 25, 1914.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

POWER AND IRRIGATION COMPANY OF CLEAR
LAKE, a Corporation,

Appellant,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L. PHIL-
LIPS, ARCHIBALD S. WHITE, C. L. PARMALEE,
GEORGE H. HULL, Jr., ROY M. PIKE, OAKLAND
BANK OF SAVINGS, a Corporation, YOLO COUNTY
CONSOLIDATED WATER COMPANY, a Corpora-
tion, CAPAY DITCH COMPANY, a Corporation,
YOLO WATER AND POWER COMPANY, a Corpo-
ration, and WHITE & COMPANY, a Common Name
Under Which More Than Two Persons are Associated
in Business and Transact Such Business,

Appellees.

Supplemental Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff and Appellant,
vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C. L.
PARMALEE, GEORGE H. HULL, Jr., ROY
M. PIKE, OAKLAND BANK OF SAVINGS,
a Corporation, YOLO COUNTY CONSOLI-
DATED WATER COMPANY, a Corporation,
CAPAY DITCH COMPANY, a Corporation,
YOLO WATER AND POWER COMPANY,
a Corporation, and WHITE AND COM-
PANY, a Concern Name Under Which More
Than Two Persons are Associated in Busi-
ness and Transact Such Business,
Defendants and Appellees.

**Stipulation for Further Transcript of Record on
Appeal.**

IT IS HEREBY STIPULATED AND AGREED,
BY and between the parties to the above-entitled
action, that the defendants and appellees may cause
to be included in the printed Transcript of Record
in said action duly certified copies of the following:

1. That portion of the Answer to the Bill in
Equity denominated the Sixth Further and Separate
Defense to said Action beginning at page 69, line 19,
and ending page 69, line 30, of said Answer.

114 *Power and Irrigation Company of Clear Lake*

2. That certain Minute Order of April 4, 1914, wherein it was ordered that the question of jurisdiction raised by the Answer be submitted without argument.

Dated: December 1st, 1914.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Plaintiffs and Appellants.

A. E. SHAW,
DENSON, COOLEY & DENSON,
BERT SCHLESINGER,
MASTICK & PARTRIDGE,
THEODORE A. BELL,

Solicitors for Defendants and Appellees.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk.

*In the United States District Court for the Northern
District of California.*

No. 19.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C. L.
PARMALEE, GEORGE H. HULL, Jr., ROY
M. PIKE, OAKLAND BANK OF SAVINGS,
a Corporation, YOLO COUNTY CONSOLI-
DATED WATER COMPANY, a Corporation,

CAPAY DITCH COMPANY, a Corporation,
YOLO WATER AND POWER COMPANY,
a Corporation, and WHITE AND COM-
PANY, a Common Name Under Which More
Than Two Persons are Associated in Busi-
ness and Transact Such Business,
Defendants.

Answer to Bill in Equity.

* * * * *

SIXTH.

That this Honorable Court has no jurisdiction over either the persons of these defendants or of the subject matter of this action, in this:

That defendants are informed and believe, and on such information and belief allege, that the said plaintiff corporation was formed under the laws of the State of Arizona for the purpose alone of conferring jurisdiction upon this Honorable Court and of divesting the Courts of the State of California of jurisdiction hereof.

* * * * *

At a stated term, to wit, the March term, A. D. 1914, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the Courtroom in the City and County of San Francisco, on Saturday, the 4th day of April, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM

116 *Power and Irrigation Company of Clear Lake*

C. VAN FLEET, District Judge, and The
Honorable MAURICE T. DOOLING, District
Judge.

Before DOOLING, D. J.

No. 19—EQUITY.

POWER & IRRIGATION CO. OF CLEAR LAKE

vs.

JOSEPH CRAIG et al.

Order of Submission of Jurisdictional Question, etc.

In this suit no one being present on behalf of plaintiff, John S. Partridge and A. E. Shaw, Esqrs., appearing on behalf of defendants, on motion of Mr. Partridge it was ordered that the question of jurisdiction raised by the answer be submitted without arguments.

Ordered that defendants' application for order allowing interrogatories to be answered and plaintiff's application for order for settlement of interrogatories, etc., be continued to April 18, 1914.

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 19—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff,

vs.

JOSEPH CRAIG, WILLIAM A. BRADY, E. L.
PHILLIPS, ARCHIBALD S. WHITE, C. L.
PARMALEE, GEORGE H. HULL, Jr., ROY

M. PIKE, OAKLAND BANK OF SAVINGS, a Corporation, YOLO COUNTY CONSOLIDATED WATER COMPANY, a Corporation, YOLO WATER AND POWER COMPANY, a Corporation, and WHITE AND COMPANY, a Concern Name Under Which More Than Two Persons are Associated in Business and Transact Such Business,

Defendants.

Praeceptum for Further Transcript on Appeal.

To the Clerk of Said Court:

SIR: In addition to those portions of the record requested in the Praeceptum of the plaintiff in the above-entitled action, please include in the certified transcript of record, upon an appeal allowed in this cause to the Circuit Court of Appeals of the United States, for the Ninth Circuit, the following:

1. That portion of the Answer to the Bill in Equity denominated the Sixth Further and Separate Defense to said Action beginning at page 69, line 19, and ending page 69, line 30, of said Answer.

2. That certain Minute Order of April 4, 1914, wherein it was ordered that the question of jurisdiction raised by the Answer be submitted without argument.

Dated: December 1st, 1914.

A. E. SHAW,
DENSON, COOLEY & DENSON,
BERT SCHLESINGER,
MASTICK & PARTRIDGE,
THEODORE A. BELL,

Solicitors for Defendants.

Receipt of a copy of the within Praecepte this 1st day of December, 1914, is hereby admitted.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk.

[**Certificate of Clerk U. S. District Court to
Additional Portions of Record on Appeal.**]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 19—IN EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff and Appellant,

vs.

JOSEPH CRAIG et al.,

Defendants and Appellees.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing to be full, true and correct copies of the Stipulation for further transcript of record on appeal; sixth separate defense of answer; order of submission of jurisdictional question and praecipue for further transcript on appeal, as the same remain of record and on file in the office of the Clerk of said District Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 4th day of December, A. D. 1914.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled Dec. 4, 1914. J. A. S.]

[Endorsed]: No. 2521. United States Circuit Court of Appeals for the Ninth Circuit. Power and Irrigation Company of Clear Lake, a Corporation, Appellant, vs. Joseph Craig, William A. Brady, E. L. Phillips, Archibald S. White, C. L. Parmalee, George H. Hull, Jr., Roy M. Pike, Oakland Bank of Savings, a Corporation, Yolo County Consolidated Water Company, a Corporation, Capay Ditch Company, a Corporation, Yolo Water and Power Company, a Corporation, and White & Company, a Common Name Under Which More Than Two Persons are Associated in Business and Transact Such Business, Appellees. Supplemental Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Received and filed December 4, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.

